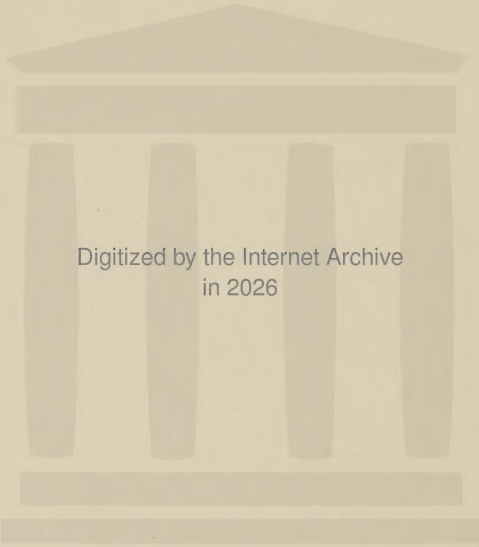


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THE LAW
OF
Joint Stock Companies:

CONTAINING

THE COMPANIES ACT, 1862,
AND THE ACTS INCORPORATED THEREWITH:

WITH

PROBIOUS NOTES OF CASES RELATIVE TO
JOINT STOCK COMPANIES,

The Rules and Forms of the Court of Chancery

IN PROCEEDINGS UNDER THE ABOVE ACT,

AND

FORMS OF ARTICLES OF ASSOCIATION.

BY

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PREFACE.



AFTER many attempts to simplify the Law relative to Joint Stock Companies a code has been promulgated by the Legislature for the formation, regulation and winding-up of companies of every description. A favourable opportunity is thus afforded for the publication of a new Manual on the subject in a comparatively narrow compass.

Although the law on the above subject has been included in some valuable works on the law of partnership, it appears to the Author that a separate work embracing the whole subject is a desideratum, as affording a continuous, in lieu of a disjointed, view of the subject.

The Law relative to Joint Stock Companies has not at present many rules in common with those on the law of partnership, but it has in fact been framed to supersede some of those rules, and to establish a separate system independent of the general law of partnership.

The Companies Act, 1862, is founded upon several previous statutes, and in many instances adopts, nearly verbatim, the language of the provisions of those statutes; it is obvious, therefore, that the notes of the de-

cisions on the repealed acts, which are added, will afford material assistance in the construction of the new Act.

The Companies Act, 1862, incorporates by reference some other Acts and parts of Acts of Parliament, which are printed in this Work either as notes, or separately at the end of this Work. The Industrial and Provident Societies Act, 1862, which is connected with the above Act, is added. The Act 7 Will. 4 & 1 Vict. c. 73, for enabling the Crown to confer powers on trading and other companies, is also included.

The Companies Act, 1862, differs from the preceding Joint Stock Companies Acts in some important points of principle and in some minor matters of detail. The following are some of the principal :—

1. A new class of companies may be established under the title of a company *limited by guarantee*, in which the members undertake to contribute in a limited amount to the assets of the company in the event of the same being wound-up. It is obligatory upon a company of this kind that its memorandum of association should be accompanied, when registered, by articles of association signed by the subscribers of the memorandum, and prescribing such regulations as they deem expedient. Sect. 14, *post*, p. 21. In the event of the company being wound-up no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association. Sect. 38, pl. 5, *post*, p. 46.

When an order has been made for winding-up a company limited by guarantee, and having a capital

limited by shares, or where any such company is being wound-up voluntarily, any share capital that may not have been paid up shall be deemed assets of the company and a debt due to the company from each member to the extent of any sums that may remain unpaid on any shares held by him. See sects. 90, 134, *post*, pp. 109, 173.

2. Insurance companies which previously to the Companies Act, 1862, were governed by the Act 7 & 8 Vict. c. 110, *post*, p. 237, n., which was not repealed as to such companies (see 20 & 21 Vict. c. 80; see *post*, p. 77), have now become subject to the same provisions as other companies. Such companies were required to register on or before the 3rd December, 1862. See sect. 209, *post*, p. 237. The new Act, however, does not invalidate any provision in any policy of insurance or other contract whereby the liability of individual members upon any such policy is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract. See sect. 38, pl. 6, *post*, p. 146.

3. The jurisdiction to wind-up companies is transferred to the Court of Chancery, so that the Court of Bankruptcy can now only act in such matters under the new Act by the direction of the former Court.

4. The new Act has abolished the office of creditors' representative, who was appointed in pursuance of the Act 21 & 22 Vict. c. 78, to represent the creditors in winding-up.

5. The jurisdiction of the Court of Stannaries is considerably enlarged.

6. Provisions are made for the registration of existing companies. See sects. 179—198, *post*, p. 217—230. The Companies Act, 1862, is also applied to winding-up unregistered companies, except railway companies incorporated by Act of Parliament. See sects. 199—204, *post*, pp. 230—235.

Some observations on the formation of a company are made in the following pages. See pp. 5, 241. The memorandum of association prescribes the name of the company, the place for the registered office, the objects for which it is formed, the liability of the members, the nominal capital of the company and the amount of the shares. This document requires the names, addresses and descriptions of the subscribers, the number of shares taken by each and the signature of each subscriber in the presence of one witness.

In a company limited by shares the parties may adopt such of the provisions contained in Table (A.), *post*, p. 241, as they think proper, or they may frame a deed quite independent of those provisions. It is only essential that the form for the government of the company should be settled at the time of registration.

The mode by which the business of the company is to be conducted, the number and qualifications of the directors, and generally the whole internal management of the company, may be subject to such regulations as the parties think fit to adopt.

The Author, having been favoured with some printed forms of registered Articles of Association, has inserted two forms. The first form adopts Table (A.) to a limited extent. The second form is framed independently of

that table, and is complete in itself. It is presumed that the insertion of these forms, which appear to be skilfully drawn, will render this work more generally useful by affording useful hints for framing instruments of a similar nature.

In many cases the most advisable course to be pursued in framing articles of association will be, not to adopt Table (A.) either wholly or partially by reference, but to frame an entire code for the government of the company. The articles so framed may embody or modify such of the regulations in Table (A.) as will suit the particular case.

The advantage and convenience of having a legal instrument complete in itself, instead of having to refer to portions of other forms, is obvious. It was observed by Mr. Brodie, the eminent Conveyancer,—“In common sense every instrument should be perfect in itself, and should not have its construction dependent upon another instrument.”

It is scarcely necessary to observe that great care is required in preparing the articles of association for the government of the company, as every violation of them is illegal and will render the directors or officers of the company personally liable for a breach of the regulations contained in them.

It should also be borne in mind that the articles when registered bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were a covenant on the part of himself, his heirs, executors and administrators, to conform to all the regula-

tions contained in such articles, subject to the provisions of the Companies Act, 1862. See sect. 16, *post*, p. 22.

The regulations when registered can only be altered by a special resolution to be passed by a majority of not less than three-fourths of the members of the company for the time being entitled, according to the regulations of the company, to vote as in the act is mentioned. See sects. 50, 51, *post*, pp. 53, 54.

The intimate connection of the subject-matter of parts of this Work with the Author's previous works on the Law of Railways and Bankruptcy has facilitated the compilation of portions of this Work, although it does not extend to companies formed under the Companies Clauses Consolidation Act, 1845, or by special Act of Parliament.

The last subject is reserved for a new Edition of the Author's Work on the Law of Railways.

The notes of the reported Cases on the Law of Joint Stock Companies which are still applicable to past transactions, or which may assist in construing the new Act, are brought down to the present time. The Author entertains a confident hope that this Work, on account of the importance of the subject and of the time and labour bestowed upon it, will be as favourably received by the profession and by the public as many of his former publications.

3, BRICK COURT, TEMPLE.

12th March, 1863.

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ADDENDA.

Page 2, at end of second paragraph.

The case of *London and Provincial Provident Society v. Ashton* is now reported, 12 C. B., N. S. 709. Pollock, C. B., considered the object of the 3rd section of 25 & 26 Vict. c. 89, was to remove all doubt in future in consequence of the decision of the Court of Exchequer, that a company carrying on the business of insurance and also that of money lending was incapacitated from suing at law or in equity, unless registered under the Joint Stock Companies Act, 1857.

Page 63, at end of second paragraph.

Where directors of a joint stock company are authorized by the deed of settlement to draw or accept bills of exchange, a proviso in the deed, limiting the liability of the shareholders upon such bills of exchange to the extent of their respective shares in the capital stock, is repugnant and void; and bills drawn in a proper form by a duly authorized agent in Canada of the company, and accepted by directors in England, are binding upon the shareholders, and carry damages and interest according to the provisions of the Canadian law. *Re State Fire Insurance Co., Meredith's Case, Conner's Case*, 11 W. R. 416; see *Gordon v. Sea, Fire and Life Assurance Co.*, 26 L. J., Exch. 202; *Peddell v. Gwyn, Ib.*, 199.

Page 65, at end of fourth paragraph.

Money borrowed for a company and *bonâ fide* applied for its benefit is recoverable, although the directors had no powers to borrow. *Ex parte Moore, Re Electric Telegraph Company of Ireland*, 30 Beav. 225.

Page 66, at end of first paragraph.

Debentures were issued by a limited company, and certain ships were assigned to trustees to secure "to the holders for the time being" of the debentures the amount therein expressed to have been lent to the company. Some of these debentures were issued to agents of the company who had incurred expense on its account. An assignee for value from the agents sought to have the debentures paid out of the proceeds of the sale of the ships. The company alleged that there were outstanding accounts between themselves and their agents, on which a balance would be found due to them, and they claimed to set-off this balance against the amount payable on the debentures: it was held, that, without reference to the peculiar form of the trust-deed, the company had no such equity against the parties to whom they issued the debentures, and therefore they had none against the assignee. *Aslatt v. Farquharson*, 10 W. R. 458.

Page 99, at end of section 79.

A friendly and provident society which has ceased to carry on business for many years is an association within the terms of the Companies Act, 1862, and may be wound-up under that act. *Re Alfreton District Friendly and Provident Society*, 11 W. R. 301.

Page 106, at end of first paragraph.

Provisional appointment of official liquidator under sect. 85 of the 2 & 26 Vict. c. 89. *Re Rockall Fishing, Fish and Fish Manure Company*, 1 W. R. 184.

Page 110, at end of first paragraph.

The court will not, upon the hearing of a winding-up petition, nominate an official liquidator except by consent. *Re Commercial Discount Company*, 11 W. R. 353.

Page 116, at end of fourth paragraph.

A friendly and provident society, which had done no business since 1844, was ordered to be wound-up under the Companies Act, 1862, and coming within it. *Re Alfreton District Friendly and Provident Society*, L. T., N. S. 817.

Page 117, at end of second paragraph.

The first section of the act 12 & 13 Vict. c. 108, which excepts companies formed for working mines on the cost-book principle from the operation of the winding-up acts, except on the petition of one-tenth in value of the shareholders, does not apply to a mine in Devonshire, notwithstanding the statute 18 & 19 Vict. c. 32, extends the jurisdiction of the stannaries court to that county. The fact that shareholders in mining company are being sued at law is a sufficient ground within 2 & 21 Vict. c. 78, s. 12, for the granting of a winding-up order by the Court of Chancery. *Re South Lady Bertha Copper Mining Company*, 9 Jur., N. S. 170.

Page 120, at end of third paragraph.

In order to fix an allottee as a contributory it is necessary to show an acceptance in writing, or in the absence of that document something done on his part in pursuance of such acceptance from which the existence of that document may be presumed. *Re Bitumenised Company Limited*, 7 L. T., N. S. 760.

Page 150, before last line.

A company originally registered in 1852 as a company with unlimited liability, was in 1856 registered with limited liability under the act of that year. Kindersley, V.-C., ordered the company to be wound-up, and appointed the appellant official manager, who took the necessary steps for winding-up. The order for winding-up was afterwards discharged on the ground that the Court of Chancery had no jurisdiction, and a winding-up order was made in bankruptcy and an official liquidator appointed, to whom the appellant paid all the assets in his hands, with

at any deduction for his costs, fees, &c. On a petition by him for payment thereof, the court of appeal decided that it had no jurisdiction to make such an order, and the petition was dismissed with costs. *Ex parte Harding, Re Plumstead, &c. Water Company*, 7 L. T., N. S. 550.

Page 151, at end of third paragraph.

Where the creditors and contributories have common and equal rights the creditors' representative ought not to appear by counsel to resist claims made against the estate, but ought to leave the matter in the hands of the official manager. When any question arises between the creditors and the contributories, the creditors' representative is entitled to appear by counsel as well as the official manager, and will be allowed the costs of his appearance. *Re Era Assurance Company*, 11 W. R. 320; 9 Jur., N. S. 163.

Page 155, at end of third paragraph.

Garnett, &c. Mining Company v. Sutton is now reported 32 L. J., Q. B.

Page 182, at end of section 158.

The winding-up of a joint stock company proceeds upon the same principles as that of any other partnership, and although the Winding-up Act, 1848, does not mention contingent interests, such as annuities, yet a creditor by way of annuity will be allowed to prove as against the assets of the company for the value of such annuity. *Re English and Welsh Church, &c. Assurance Company, Hunt's Case*, 7 L. T., N. S. 669; *Re Evans v. Coventry*, 3 Drew. 76; 5 De G., M. & G. 911.

Page 184, at end of second paragraph.

The official manager of an unincorporated company cannot institute a suit against some of the company. It was questioned whether the official manager of an unincorporated company can sue or be sued by members. The bill was dismissed without costs, as the defendant's objection, though successful, might have been taken by demurrer. *Ernest Weiss*, 9 Jur., N. S. 145.

Page 214, at end of fourth line from bottom.

This case is now reported in 1 Hurls. & Coltman, 134.

Page 236, at end of last paragraph.

Where a resolution has been passed before the passing of Companies Act, 1862, for winding up a company voluntarily, the Court of Chancery has no authority under that act to make a winding-up order; but the 7th section preserves the previous jurisdiction, which, in cases of limited companies, was exclusively vested in the Court of Bankruptcy. *West Silver Bank Mining Company (Limited)*, 11 W. R. 394; New York, p. 463.

Page 295, at end of first rule.

The petition for winding-up a company should not also pray for the

appointment of a particular person as official liquidator. The court has power to appoint one at the hearing of the petition if the parties consent; otherwise the matter must be settled in chambers. 7 L. T., N. S. 816.

Page 297, at end of first paragraph.

Where a company's office is shut up, and there is a notice on the door that it has transferred all its business to another company, the court will order service of a winding-up petition on any five of the directors. *Unity General Assurance Association*, 11 W. R. 355. Rule 3, Order of November, 1862.

It is in the discretion of the judge to hear matters relating to winding-up order in chambers or to adjourn it into court. On an application by the official manager to the Lords Justices for an order that the Master of the Rolls might hear the case in chambers and not in court, they refused the application on the ground that they had not jurisdiction to direct the Master of the Rolls as to the mode of conducting the business of his court, which was a matter wholly within his own discretion. *Re Agricultural Assurance Company*, 11 W. R. 330, 38.

By 23 & 24 Vict. c. 15, sched. tit. *Cost-Book Mines*, a sixpenny stamp is imposed upon any note, instrument or writing requesting or authorizing the purser or other officer of any mining company conducted on the cost-book system to enter or register any transfer of any share or shares or part of a share in any mine, or any notice to such purser or officer of such transfer.

The court on an *ex parte* application directed the winding-up petition to be served on the chairman and general manager only of a company proposed to be wound-up, and which had no known place of business. 7 L. T., N. S. 817.

Title of Petition.] A petition was presented for the winding-up of a company, after which a resolution of the company was passed for the voluntary winding of it up. The 25 & 26 Vict. c. 89, afterwards came into operation, after which the company was registered under it. Upon the petition, which was entitled in the acts 1848, 1849 and 1857, coming on to be heard, it was objected that it ought to have been entitled in the Companies Act of 1862: it was held, that it was sufficiently entitled without the addition of that act. *Re Public Life Assurance Society*, 7 L. T. N. S. 303—R.

Page 416, at end of second paragraph.

By the terms of an agreement between the plaintiff and the defendant the defendant was to give the plaintiff sixty shares in a company in the course of formation within one month from the complete registration of the company, or pay him 150*l*. The defendant having provided that the plaintiff should have sixty shares in the company; the plaintiff executed the deed of settlement in respect thereof in December. In February the company was completely registered, but the share register was not sealed (though it was in existence from the complete registration of the company) till May, and scrip certificates not ready till some days afterwards. The plaintiff having brought an action to recover the 150*l*. as in default to deliver him the shares: it was held that he was not en-

ed to recover, inasmuch as the property in the shares vested in him the execution of the deed and the complete registration of the company, and that the delivery of scrip certificates was not necessary to satisfy the agreement, the certificates being no more than mere indicia of property in the shares. *Hunt v. Gunn*, 3 F. & F. 223; 7 L. T., N. S.

ge 421, at end of first paragraph.

shares of a company were not saleable in the market, although it did appear that its pecuniary affairs were in a state of insolvency. A., a shareholder, threatened to apply for a winding-up order, or to file a bill in equity, which would have the same result, unless the directors within a week found some person who would take a *bonâ fide* transfer of the shares which A. held, and give him an indemnity. A director agreed to take the shares, the consideration money was paid for them, the indemnity given and the transfer duly registered: it was held that A. was not a contributory, he having effectually parted with his shares. *Re Phoenix Assurance Company, ex parte Reeve*, 10 W. R. 817; 7 L. T., N. S.

ge 425, at end of third paragraph.

[*Deposit Notes*.] A director of a company, indebted for calls, delivered a deposit note of the company to the plaintiff for value, and without notice: it was held that the company was liable on the note, and could set-off against the plaintiff the amount due from the director for calls. *Thomson v. Anglo-Australian and Universal Family Life Assurance Company*, 3 Giff. 238.

ge 437, at end of third paragraph.

When the acquiescence of the shareholders of a joint stock company is necessary to give validity to a transfer of shares to a trustee for the company, the entry of the transfer in the books of the company and the return of the names of the transferee to the registration office, is sufficient notice to the shareholders, whose acquiescence after two years may be presumed. A shareholder who has sold and transferred his shares to a trustee for the company, under the belief that he is dealing with the transferee personally, cannot afterwards be placed on the list of contributories, whether the company has power to purchase shares or not. *Re British Provident Assurance Society, Grady's Case*, 11 W. R. 385.

ge 441, at end of third paragraph.

An insurance company purchased the business, received the assets and undertook the liabilities of another insurance company. A creditor of the selling company cancelled his security and accepted a substituted security of the purchasing company. The purchase having been held valid as *ultra vires*: it was held that the court has jurisdiction to relieve against a mistake in law, and that the creditor was remitted to his original rights against the selling company, and was entitled to prove in the winding-up proceedings. *Re Saxon Life Assurance Society, ex parte Era Insurance Company*, 2 Johns. & H. 408. Affirmed on appeal, 11 W. R. 7 L. T., N. S. 404—L. J. The purchasing company having actually

received all the assets and taken the business of the selling company and both companies having since been wound-up: it was held that purchasing company was not entitled to prove against the selling company an excess of debts paid over assets received, it being impossible to rest both companies to their original situation. *Ib.*

Page 445, at end of second paragraph.

Although alternative cases may be embodied in one bill and alternative relief prayed by it, it is necessary that the plaintiff should have and the same character, and therefore where a bill was filed by a shareholder suing on behalf of himself and all the other shareholders of a mining company, and prayed alternative relief, one branch of which antagonistic to the interests of the shareholders, whom the plaintiff partly professed to represent: it was held that the bill could not be maintained. Where a case is brought forward by an individual shareholder on behalf of a company or partnership, it must be by a bill directed exclusively and *bonâ fide* to the maintenance of the common interest and benefit of the company. *Thomas v. Hobler*, 8 Jur. N. S. 125.

Page 448, at end of first paragraph.

The directors of a projected banking company, not being able to carry out the project to its full extent, determined upon winding-up the affairs and returning to the applicants for shares the deposits made by them. Deposits amounting in the whole to two-thirds of the amount deposited had been returned to the depositors, and the remainder was in course of payment. On a bill filed by purchasers of shares or intended shareholders who were dissatisfied with the termination of the affairs of the projected company: it was held that the directors were justified in the course they had taken, it being morally impossible that the project could have been carried out in its integrity from the events which had happened. *Bank of Switzerland v. Bank of Turkey*, 5 L. T., N. S. 549.

Page 459, at end of third paragraph.

A judgment by a foreign tribunal of competent jurisdiction is conclusive, *inter partes*, on the merits of the matter in controversy, but being one *in rem* may be reviewed by the courts of this country, if error appears on the face of the proceedings. Where a foreign tribunal refuses to recognize either the *lex loci contractus* or the *lex domicilii* in the acquisition of a title according to the laws of this country, and proceeds in defiance of the comity of nations, its judgment will be disregarded by the courts here. The law properly applicable to the distribution of assets is the *lex fori*. *Simpson v. Fogo*, The New Rep. 4-11 W. R. 418—V. C. W.; see *Castrique v. Imrie*, 8 C. B., N. S. 405; *Cammell v. Sewall*, 3 H. & N. 617, *post*, p. 457; *Hope v. Hope*, Jur. N. S. 454; Story's Conf. of Laws, ss. 323, 324; *Richardo v. Garcia*, 12 Cl. & Fin. 368; *De Cosse Brissac v. Rathbone*, 6 H. & N. 301.

THE LAW

OF

JOINT STOCK COMPANIES.

25 & 26 VICT. c. 89.

An Act for the Incorporation, Regulation and Winding-up of Trading Companies and other Associations. [7th August, 1862.]

WHEREAS it is expedient that the laws relating to the incorporation, regulation and winding-up of trading companies and other associations should be consolidated and amended: be it therefore enacted, &c. as follows:

Preliminary.

1. This act may be cited for all purposes as “The Companies Act, 1862.” Short title.
2. This act, with the exception of such temporary enactment as is hereinafter declared to come into operation immediately (*a*), shall not come into operation until the second day of November, one thousand eight hundred and sixty-two, and the time at which it so comes into operation is hereinafter referred to as the commencement of this act. Commencement of act.
- (*a*) See *post*, sects. 209, 210.
3. For the purposes of this act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company (*b*). Definition of insurance company.
- (*b*) The 20 & 21 Vict. c. 14, s. 27, which required every company registered under the 7 & 8 Vict. c. 110, but excluding

any company formed for the purpose of insurance, to register under the Joint Stock Companies Acts, 1856 and 1857, on or before the 2nd Nov. 1857, only exempted from such registration companies formed for the purpose of insurance only. Therefore, where a company completely registered under the former act, formed for the purpose of and carrying on the business of insurance, and *also the lending of money*, and not registering under the latter acts, was, by 20 & 21 Vict. c. 14, s. 28, incapable of suing at law or in equity. It seems that the fact of an insurance company lending its funds did not necessarily take it out of the exception, such a loan not being a purpose for which the company was formed. *London Monetary Advance and Assurance Company v. Smith*, 3 H. & N. 543; 27 L. J., Exch. 479.

It has since been decided that a company completely registered under 7 & 8 Vict. c. 110, which was formed not only for the purpose of insurance but also for the granting of endowments, annuities, assistance during sickness, and loans, is a company formed for the purpose of insurance within the 20 & 21 Vict. c. 14, s. 27, and may sue at law or in equity under the Joint Stock Companies Acts, 1856, 1857. *London and Provincial Provident Society v. Ashton*, 11 W. R. 152.

Every insurance company completely registered under the 7 & 8 Vict. c. 110, was required, by the 209th sect. of this act, to register on or before the 2nd November, 1862.

Prohibition
of partner-
ships exceed-
ing certain
number (a).

4. No company, association or partnership consisting of more than ten persons shall be formed, after the commencement of this act, for the purpose of carrying on the business of banking, unless it is registered as a company under this act (b), or is formed in pursuance of some other act of parliament (c), or of letters-patent (d); and no company, association or partnership consisting of more than twenty persons shall be formed, after the commencement of this act, for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this act, or is formed in pursuance of some other act of parliament, or of letters-patent, or is a company engaged in working mines within and subject to the jurisdiction of the stannaries (e).*

(a) This section differs from 19 & 20 Vict. c. 47, s. 4.

(b) See the definition of an existing joint stock company, so far as relates to the description of companies empowered to register, as companies limited by shares; *post*, sect. 181.

(c) Many companies have been formed under special acts of parliament. See Index to Local and Personal Acts from 1801 to 1859, pp. 635—654. See 7 Geo. 4, c. 46, as to banking companies, which is not repealed. 7 & 8 Vict. c. 32.

(d) See 7 Will. 4 & 1 Vict. c. 73, which empowers the crown by letters-patent to confer powers on trading and other companies.

(e) See 20 & 21 Vict. c. 14, s. 3.

Each one of the persons carrying on business in partnership contrary to the 3rd section of 20 & 21 Vict. were severally liable for the payment of the whole debts of the partnership, and might be sued for the same without the joindure in the action or suit of any other member of the partnership. 20 & 21 Vict. c. 14, s. 3.

The Stannary Courts in Cornwall and Devonshire were established by custom. These courts are now regulated by the statute 6 & 7 Will. 4, c. 106, amended by 2 & 3 Vict. c. 58; 11 & 12 Vict. c. 83, s. 7; and 18 & 19 Vict. c. 32, for the better and more expeditious administration of justice in the Stannaries, and for enlarging the jurisdiction and improving the practice and proceedings of the Stannaries Court.

The jurisdiction of the vice-warden of the Stannaries is enlarged by the 68th section of this act; and see sections 81, 83, 108, 116, 120, 124, 125 and 172, *post*.

The statutes 4 & 5 Will. 4, c. 42; 2 & 3 Vict. c. 58; 11 & 12 Vict. c. 83, and 18 & 19 Vict. c. 32, contain provisions for facilitating the taking of affidavits and affirmations in the court of the vice-warden of the Stannaries of Cornwall.

Under the 12th section of stat. 6 & 7 Will. 4, c. 106, the 12th, 17th and 22nd sections of the act 1 & 2 Vict. c. 110, have become applicable in case any rule of the court of the vice-warden cannot be enforced, by reason of the non-residence of any parties within the jurisdiction of the Stannaries.

In *Nichols v. Rosewarm*, 7 W. R. 612, it was questioned, without any decision being made, whether shares in cost-book mines can be charged under the 13th section of 1 & 2 Vict. c. 110. The question being whether mining companies are public companies within that section.

It is stated to have been the practice, in the case of a judgment against a shareholder in a Cornish mining company, for the sheriff of Cornwall to seize and sell upon a *fi. fa.* the interest of the judgment debtor, as in the case of an ordinary partnership. 1 Lindley on Partnership, pp. 592, 593.

The 57th, 59th, 64th and 67th sections of the 7 & 8 Vict. c. 96, for amending the law as to insolvency, bankruptcy and

execution, apply to these courts. See Shelford on Bankruptcy, pp. 53, 66, 68 and 70, 3rd ed.

See Proceedings in the Stannary Courts of Cornwall and Devon, published by authority. 12mo. 1856; Bainbridge on Mines, pp. 571—573, 2nd ed.; Wordsworth on Joint Stock Companies, pp. 220—230, 6th ed.; Lindley on Partnership, p. 111. As to cost-book mining companies, Collier on Mining, 12mo. 1855; *The Readwin Prize Essay* on the Cost-book, by Tapping, 2nd ed. 1854.

Division of
act.

5. This act is divided into nine parts, relating to the following subject matters.

The First Part—to the Constitution and Incorporation of Companies and Associations under this Act (*g*):

The Second Part—to the Distribution of the Capital and Liability of Members of Companies and Associations under this Act (*h*):

The Third part—to the Management and Administration of Companies and Associations under this Act (*i*):

The Fourth Part—to the Winding up of Companies and Associations under this Act (*k*):

The Fifth Part—to the Registration Office (*l*):

The Sixth Part—to Application of this Act to Companies registered under the Joint Stock Companies Act (*m*):

The Seventh Part—to Companies authorized to register under this Act (*n*):

The Eighth Part—to Application of this Act to unregistered Companies (*o*):

The Ninth Part—to Repeal of Acts, and temporary Provisions (*p*).

(*g*) Sects. 6—21.

(*h*) Sects. 22—38.

(*i*) Sects. 39—73.

(*k*) Sects. 74—173.

(*l*) Sect. 174.

(*m*) Sects. 175—178.

(*n*) Sects. 179—198.

(*o*) Sects. 199—204.

(*p*) Sects. 205—212.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES
AND ASSOCIATIONS UNDER THIS ACT.*Memorandum of Association.*

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this act in respect of registration, form an incorporated company, with or without limited liability (b).

Mode of
forming
company (a),

(a) This section is the same as the 3rd section of the 9 & 20 Vict. c. 47.

(b) The course which has hitherto been pursued when it was proposed to establish a company was, to issue a prospectus, containing a statement of the objects of the company, of the proposed amount of capital to be subscribed, and of the number of shares into which it will be divided, with a short sketch of the proposed constitution of the company in material particulars. In order to allow a deviation from the prospectus, a clause is sometimes introduced, that the directors shall have the power of making alterations or modifications in the particulars of the prospectus. There have been various cases at law establishing the principle, that where there has been fraud on the part of those who have issued a prospectus or advertisement of the company, persons who have subscribed on the faith of such prospectus or advertisement are entitled to recover back what they have so subscribed against the parties to the fraud or misrepresentation. *Fox v. Clifton*, 1 Bing. 776; *Pitchford v. Davis*, 5 Mees. & W. 2; *Wontner v. Chairp*, 4 Railw. C. 542; *Nockels v. Crosby*, 3 B. & C. 814. But subscribers may lose such right by acquiescing in a departure from the terms of the prospectus. *Braithwaite v. Skoeld*, 9 B. & C. 401; *Tredwen v. Bourne*, 6 Mees. & W. 461; *Steinberger v. Carr*, 3 Scott, N. R. 466.

Prospectus
of proposed
company.

The allotment of shares, which must be read as an allotment of a right to shares, is in the form of a circular or letter sent by the directors to the person who has applied for shares, and is to be taken in conjunction with the prospectus issued by the company inviting parties to apply for shares and the letter of application itself.

Allotment of
shares.

After the prospectus has been issued, a meeting will be held for the appointment of a managing committee, and for passing resolutions authorizing such committee to allot shares, and to apply the deposits to be paid thereon in payment of the preliminary expenses for bringing the company into opera-

ration. It is important that authority should be given to the provisional directors to apply the deposits on shares in payment of the expenses, and that the subscribers should sanction such application either expressly, or that the letter of application for shares should be so framed as to make it, with the letter of allotment, amount to an agreement authorizing the expenditure. *Jones v. Harrison*, 2 Exch. 52; 12 Jur. 122; *Clements v. Todd*, 1 Exch. 268. This was done in *Garwood v. Ede*, 1 Exch. 264; 5 Railw. C. 134, where the allottee signed an agreement authorizing the provisional directors to apply the monies which should come to their hands, by deposit or otherwise, in payment of the preliminary expenses of the undertaking, and the scheme having proved abortive, it was held, that the allottee was precluded by such agreement from recovering back the deposit. It is to be observed, that in the absence of an express authority, the managing committee have no power to expend the deposits received by them in payment of the preliminary expenses, but upon failure of the scheme are under an obligation to return the whole deposits to the allottees of shares. *Pitchford v. Davis*, 5 M. & W. 2; *Tredwen v. Bourne*, 6 M. & W. 461; *Walstab v. Spottiswoode*, 15 M. & W. 501; *Chaplin v. Clark*, 4 Exch. 403; *Wontner v. Shairp*, 4 C. B. 404; 4 Railw. C. 542; *Watts v. Salter*, 10 C. B. 477; *Jarrett v. Kennedy*, 6 C. B. 319; *Ashpitel v. Sercombe*, 5 Exch. 147; Shelford on the Law of Railways, pp. 670—686, 3rd ed.

What amounts to contract to take shares.

Whether or not a contract has been entered into by a party applying for shares depends upon the construction to be put upon the prospectus, the letter of application for shares, and the answer thereto. In most cases the letter of allotment appears to amount to nothing more than a proposal, and no contract is made until payment of the deposit therein required to be made. *Wontner v. Shairp*, 4 C. B. 542; *Walstab v. Spottiswoode*, 15 M. & W. 501; *Vollans v. Fletcher*, 1 Exch. 20; 5 Railw. C. 73; *Willey v. Parratt*, 3 Exch. 211; *Moore v. Garwood*, L. J. 1850, Exch. 15. A parol contract for the sale of shares is binding, not being within the Statute of Frauds. 29 Car. 2, c. 3, s. 17; *Tempest v. Kilner*, 3 C. B. 249; Shelford on Railways, p. 105, 3rd ed.

The defendants, having applied to a railway company for an allotment of one hundred shares, undertaking to accept the same, or any less number, and to pay the deposit thereon, received a letter of allotment from the company, allotting him sixty shares, headed by the words "Not transferable:" it was held, in an action by the company against the defendant to recover the deposit, that the contract was not binding on him, inasmuch as his proposal was absolute, whereas the acceptance in the letter of allotment was conditional, as it contained a qualification that the contract was "not transferable." *Duke v. Andrews*, 5 Railw. C. 496; L. J. 1848, Exch. 231; 2 Exch. 290. It was said by Parke, B., "A

party who purchased this letter of allotment might have bought it thinking it was transferable, whereas the company say they will not recognize his transferee as the holder of the shares. The two stipulations are not *ad idem*, and therefore there is no valid contract." *Ib.* See *Vollans v. Fletcher*, 5 Railw. C. 73; 1 Exch. 20; 11 Jur. 416.

If a contract be founded on fraudulent misrepresentations, such as would in a court of law be sufficient to support an action on the case, it may in a court of equity be rescinded. The fraud may consist in the misrepresentation of a fact material to the contract, where the truth of that is known to the one party and unknown to the other, and the misrepresentation is intentionally made with a view of procuring a more advantageous contract than the real facts, if truly stated, would have warranted. *Lovell v. Hicks*, 2 Y. & Coll. 51.

Fraudulent representations.

Where a party by misrepresentation draws another into a contract, such party may be compelled to make good the representation if that be possible, but if it be impossible the person deceived may avoid the contract. The same principle applies, although the party at the time believed the statement to be true, if in the due discharge of his duty he ought to have then known otherwise. *Pulsford v. Richards*, 17 Beav. 87; 17 Jur. 865; 22 L. J., Ch. 559. Third parties, who, by false representation induced others to enter into contracts, are estopped from afterwards falsifying their statement, and if necessary may be compelled to make them good. But the false statement of one not a party to the agreement entered into on the faith of it, is not a ground for avoiding it. *Ib.* Misrepresentations may be either by a suppression of the truth, or an assertion of what is false; but, to be the ground for avoiding the contract, the representation must be "*dans locum contractui*," or such that it is reasonable to infer that, in its absence, the party deceived would not have entered into the contract. *Ib.*

Where there was no evidence that the misrepresentations alleged to have been made by the defendants to the purchaser of shares were untrue, and which if taken as true would have increased the value; nor that such representations were merely conjectural, the Court of Chancery would not grant relief, but dismissed the plaintiff's bill, without prejudice to any action which he might be advised to bring. *Jennings v. Broughton*, 23 L. J., Ch. 999.

The defendant and others forming the board of management of a company, for the purpose of getting the shares of the company inserted in the official list of the Stock Exchange, through their secretary, untruly represented that two-thirds of the scrip had been paid upon the shares, the shares being in consequence of that representation inserted in the official list; the plaintiff knowing the requirements of the Stock Exchange, on the faith that two-thirds of the scrip had been paid up purchased shares in the company. The

jury having found that the representation was made falsely, it was held, that the defendant was liable to the damages sustained by the plaintiff, although the representation was not made to him directly. *Bedford v. Bagshaw*, 4 H. & N. 538; 29 L. J., Exch. 59.

Where the director of a joint stock banking company circulated deceitful representations for the purpose of raising the value of the shares in the market, and benefiting himself by the sale of his own shares, it was held, that the court might give relief to a purchaser, although he should have taken a transfer of the shares, and have become one of the company. *Stainbank v. Fernley*, 8 Jur. 262; 9 Sim. 556. No other parties were necessary besides the purchaser of the shares, the director who sold the shares, and the agent whose name was substituted for the real owner. *Ib.*

A joint stock marine insurance company had declared dividends, which, as it afterwards appeared, were not warranted by the real condition of the company. The law agent of the company, who was also a member of it, when applied to for information, mentioned these dividends as proofs of the flourishing state of the company. The person to whom he so mentioned them became afterwards a purchaser of shares: it was held, that he could not relieve himself from an action for calls nor rescind his contract on account of these representations: it was held, also, that the law agent of the company was not its agent to bind it in such matters; nor could he bind it as a partner, for a joint stock company is not, like an ordinary partnership, bound by the acts of any individual member of it. *Burnes v. Pennell*, 2 H. L. Cas. 497; 13 Jur. 897.

If the directors of a company agree to publish false statements of the affairs of the company, under such circumstances as show a fraudulent attempt to deceive, they are not only civilly liable to those whom they have deceived and injured, but may be criminally prosecuted and punished. *Ib.*

In this case it was said, "If directors have made false representations for the purpose of fictitiously enhancing the price of shares for their own benefit, and a party has thereby been deceived, and induced to purchase shares greatly beyond their value, the transfer of the shares, although executed, ought to be set aside." *Ib.*

"Dividends are supposed to be paid out of profits only, and when directors order a dividend to be paid where no such profits have been made, without expressly saying so, a gross fraud is practised; and the directors are not only civilly liable to those whom they have deceived and injured, but are guilty of a conspiracy, for which they are liable to be prosecuted and punished." Per Lords Campbell and Brougham. See 24 & 25 Vict. c. 96, s. 84, *post*, as to the criminal responsibility for publishing false statements.

A party who enters into a contract is not liable to an action for making a false representation to another, by which that party is damaged, unless the representation be made under such circumstances as will render it morally fraudulent. But when a party making an untrue representation to another for a fraudulent purpose, intending to induce the latter to do an act which he afterwards does to his prejudice, an action on the case for deceit lies, and it is not necessary to show in addition the defendant's knowledge of the untruth of the representation, if it was communicated for a deceitful purpose. The representation must, however, be fraudulently made; and where directors of a joint stock banking company published a report representing the flourishing state of the bank, which was calculated to induce parties to purchase shares, such representation being false, but not false within the knowledge of the directors, who published it without any intention to deceive, it was held, that they were not liable for loss sustained by the purchase and retention of the shares on the faith of the report, though the jury found them guilty of gross negligence. *Taylor v. Ashton*, 11 M. & W. 401; 12 L. J., N. S., Exch. 363; 7 Jur. 978.

Where a prospectus of a mining company purported to guarantee to the holders of certain shares a minimum dividend of 33l. per cent., it was held, that a party who took shares upon the faith of such guarantee, which failed, could maintain an action against one of the promoters for the loss which he sustained by such false representation in the prospectus. *Gerhard v. Bates*, 2 Ell. & Bl. 476; 17 Jur. 1097.

An action for a false representation (contained in a prospectus of a company) is maintainable against a director, although such representation may be susceptible of a meaning in which it would not be literally false. In such a case it is for the jury to say, whether the representation was made in the sense necessary to maintain the action. *Clarke v. Dickson*, 5 Jur. N. S. 1027; 28 L. J., C. P. 225; 6 C. B., N. S. 453. In order to maintain such action it is not necessary that there should have been any direct personal representation made by the defendant to the plaintiff, it is sufficient if the defendant authorized the circulation of the prospectus to the public, knowing it to contain false statements. *Ib.* The fact that other inducements were held out by other parties, in addition to such false representations, by which the plaintiff was also partially influenced, is, in itself, no defence. *Ib.*

The principle of the law of Scotland and that of England is the same, that an action may be maintained against the directors of a company in respect of any transaction which the body of shareholders could not sanction; but in respect of any transaction which they could sanction, although the directors might not have been justified in what they were doing,

Personal liability of directors for false statements.

there can be no right of action. *Davidson v. Tullock*, 6 Jur. N. S. 543, H. L.

If the directors of a banking company, which is in difficulties, make a flourishing report to the shareholders and public of the financial condition of the company, and it induces a person to purchase shares in open market or of third parties, and it turns out after he is registered in the books of the company that the report was altogether untrue and without foundation, and the company stops payment, still the purchaser is a shareholder, and liable as a contributory. *Re Liverpool Borough Bank, Ex parte Duranty*, 28 L. J., Ch. 37—R.

The directors of a company from time to time made to the general meetings of shareholders, and printed and published false and fraudulent reports of the affairs of the company; there was nothing to show that the shareholders were aware of the falsehoods of these reports. An issue of new shares having been made, a person was induced by these reports to take some of them: it was held, that notwithstanding the fraud, he was liable to be placed on the list of contributories. *Re Royal British Bank, Mixer's Case*, 4 De G. & J. 575.

A false representation by an officer of a company, even though made at the office, is not the representation of the company. *Re Royal British Bank, Ex parte Frowd*, 9 W. R. 328—V. C. K.

If directors, in the course of the performance of their duty, make false or fraudulent representations addressed to shareholders, and afterwards give to them an unauthorized circulation beyond the limits of the company, a stranger acting upon such representations and suffering loss in consequence, has no remedy against the company, unless he can show that the whole is a party to the fraud. *Ex parte Nicol, Re Royal British Bank*, 5 Jur. N. S. 205; 28 L. J., Ch. 257—L. J. Although directors are not directly authorized by the shareholders to make false or fraudulent representations, yet having the general management of the affairs of the company, the shareholders are liable to persons injured by such representations. *Ib.*—Per Turner, L. J. Shareholders are responsible for and can take no benefit under false and fraudulent representations made by those to whom they have intrusted the management of their affairs. *Ib.*

Although it may be too strict to hold that a director of a company is bound to look back through the minute-book into entries made in it before he became a director, yet, where subsequently to his becoming a director he is a party to dealings founded on those noticed in such prior entries, and allows his brother directors to act and proceed upon the notion that he affirms and adopts the transactions to which such entries relate, and this course of acting goes on during two years, he is precluded from impeaching such transactions.

unless he can establish a case of deception or want of due information. *Burt v. British Nation Life Assurance Association*, 4 De G. & J. 158.

A person applied in writing for shares in a company constituted under 19 & 20 Vict. c. 47, subject to a condition that he should have the supplying of certain articles required by the company. Shares were allotted to him, but the company never having come to any definite arrangement as to his supplying them with the articles mentioned in the conditions, he neither signed the articles of association, paid any deposit, nor did any act amounting to an unqualified acceptance of the shares. The company having been afterwards wound up under the 19 & 20 Vict. c. 47, it was held, that the applicant's name ought not to be placed on the list of contributories. *Re Sunken Vessels Recovery Company, Ex parte Wood*, 3 De G. & J. 85; 5 Jur. N. S. 1377; 28 L. J., Ch. 899. See *New Brunswick and Canada Railway and Land Company*, 4 H. & N. 580; 5 Jur. N. S. 1131.

A company registered under the Joint Stock Companies Act, 1856, was established for the purpose of accepting a transfer of and carrying into effect the undertaking of an existing railway company. Under one of the acts of the provincial legislature relating to this company, grants of land were made sufficient for the construction of a portion of the railway, and a power was reserved to the legislature of re-entering into possession of such lands, supposing the railway should not be completed within ten years, and a further grant of lands was to be made on completion of the said portion of the railway. By another act grants of land adjoining the railway were authorized to be made to the company to the extent of 10,000 acres for every 10,000*l.* expended by the company in making the railway, and the act was to continue in force for ten years. By another act the provision in the first-mentioned act as to the completion of the said portion of the railway within ten years was repealed, and in lieu thereof it was enacted that if the said railway should not be completed within four years from the date of that act, all and every the grants of land conferred by the several acts relating to the company should be null and void, and the lands should revert to and revest in her Majesty as if no grants had been made; and it was further enacted, that the several grants made to or for the benefit of the company were thereby confirmed and declared valid to all intents and purposes. The articles of association of the new company recited the above-mentioned acts, and provided that certain class A. shares should be entitled to a certificate for an allotment and appropriation of four acres of the land of the company to each share. The directors in London issued reports, on the faith of which the respondent applied at the office of the company, and was informed by the secretary that the class A. shares

were preference shares, entitling the holder to an allotment of four acres of land under the grants from the provincial government. Such reports also contained statements implying that the company had an indefeasible title to the lands granted. The respondent became the purchaser of a number of the class A. shares. He afterwards filed a bill to set aside his contract, on the ground that he had been induced by misrepresentations to take the shares, such misrepresentations consisting, amongst others, in the statement that the company had an indefeasible title to the lands granted: it was held (reversing the decision of the Lords Justices), that there were no misrepresentations on the part of the company, and that as to their title to the lands granted to them, such grants of land were made for the encouragement of the company, and therefore after they had become entitled thereto, that they were made for a consideration which, in the view of the legislature, must be taken to have been already paid by the company when they had expended so much money upon the works, and that the company had therefore an indefeasible title to the lands granted.

If reports are made to the shareholders of a company by their directors, and the reports are adopted by the shareholders and afterwards industriously circulated, representations contained in those reports must be taken to be representations made with the authority of the company, and therefore binding the company; and if those reports, having been industriously circulated, be clearly shown to have been the proximate and immediate cause of shares having been bought from the company, it cannot be permitted to retain the benefit of the contract and keep the purchase-money that has been paid.

Representations made by the secretary to a person in a general conversation, without a view to any definite statement by that person that he wants to purchase shares, are not binding on the company.

If, however, an incorporated company, acting by an agent, induces a person to enter into a contract for the benefit of the company, that company can no more repudiate their fraudulent agent, than an individual can repudiate his, consequently the company are bound by the misrepresentations of their agent.

Misrepresentation entitling to relief must be a misrepresentation of fact, and not merely a conclusion of opinion.

When a case is constituted of fraud it should be most accurately and fully stated; a mere general charge that something has been done by or obtained from a party under the influence of fraud is not sufficient, it must be shown in what it consists and how it has been effected.

When a charge is made involving the imputation of fraudulent misrepresentation or fraudulent concealment, if that charge fails it ought to fail with the ordinary penalty of the

court directing the party, who makes it without ground, to indemnify his antagonist in costs. *New Brunswick and Canada Railway and Land Company (Limited) v. Conybeare*, 31 L. J., Ch. 297; *Conybeare v. Same*, 1 De G., F. & J. 578.

Under the 19 & 20 Vict. c. 47, a printed copy of the memorandum of association or articles of association may be signed by a subscriber before the original is signed or registered in pursuance of the third section, and such signature of the subscriber is an authority for placing his name on the register of shareholders. *New Brunswick and Canada Railway and Land Company v. Boore*, 3 H. & N. 249; 27 L. J., Exch. 330.

Memorandum of articles of association.

Therefore, where a defendant having applied for shares in a proposed company and paid a deposit, signed a printed form of memorandum of association, agreed to accept certain shares allotted to him, and some weeks afterwards the original memorandum of association and articles of association were signed and registered and the defendant's name was placed on the register of shareholders: it was held, that the defendant was a shareholder in the company and liable for calls. *Ib.*

7. The liability of the members (a) of a company formed under this act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

Mode of limiting liability of members.

(a) The word "members" is substituted for the word "shareholders," which was used in the previous statutes as to joint stock companies. See definition of word "member," sect. 23, *post*, p. 31.

8. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things, (that is to say,)

Memorandum of association of a company limited by shares (b).

- (1.) The name of the proposed company, with the addition of the word "limited" as the last word in such name:
- (2.) The part of the United Kingdom, whether England, Scotland or Ireland, in which the registered office of the company is proposed to be situate:

Part I.—Constitution of Companies.

- (3.) The objects for which the proposed company is to be established (*c*):
- (4.) A declaration that the liability of the members is limited:
- (5.) The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount (*d*):

Subject to the following regulations:—

- 1. That no subscriber shall take less than one share (*e*):
- 2. That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

(*b*) See 19 & 20 Vict. c. 47, s. 5.

Changing
objects of
company.

(*c*) See form (A) in second schedule to this act, *post*.
The funds of a joint stock company established for the purposes of one undertaking cannot be applied to another, and the attempt so to apply them, though sanctioned by all the directors and by a large majority of the shareholders, is illegal. But where a company was established for the erection, furnishing and maintenance of an hotel, the carrying on the usual business of an hotel and tavern therein, and the doing all such things as are incidental or otherwise conducive to the attainment of the above objects, and the directors, while the hotel was in the course of being built, agreed to let off, for a stipulated period of short duration, a large portion of it to the head of a government department for the business of his office, and evidence was given that such a letting was calculated to be productive of advantage to the company in its intended business, and that a majority of shareholders had sanctioned the act: it was held, that the arrangement was valid within the words of the clause, "all such things as are incidental or otherwise conducive to the attainment of the objects for which the company was established." No costs were given by the Lords, because the Lords Justices were divided in opinion as to the propriety of the Vice-Chancellor's decree. *Simpson v. Westminster Palace Hotel Company*, 8 H. L. C. 712. In this case it was argued that the object of the agreement was entirely different from that of carrying on the business of an hotel keeper, for which the company was instituted. The occupation of rooms for the purposes of the public business of the government was not occupation for the business of an hotel, more especially when the occupants did not take their meals there nor sleep there; such letting therefore did not fall within any of the words defining the power of the directors, and consequently was not an act which could by law be confirmed and rendered valid even by the

vote of a general meeting. Lord Campbell said that the case was to be determined on that principle, and bowed to the authority of the cases of *Natusch v. Irving*, Gow on Partn. 126, 257, 2nd ed.; *Const v. Harris*, Turn. & R. 496; *Coleman v. Eastern Counties Railway Company*, 10 Beav. 1, establishing the proposition that the funds of a joint stock company established for one undertaking cannot be applied to another. If an attempt to do so is made, such act is *ultra vires*, and although sanctioned by all the directors and by a large majority of the shareholders, any single shareholder had a right to resist it, and a court of equity will interpose on his behalf by injunction. A railway company cannot apply its funds to make a line of railway different from that described in the act by which the company was constituted; a company established for granting fire and life insurances cannot engage in marine insurances; a company established to make a railway and exercise the trade of carriers upon the line from one town in England to another, cannot add to it the trade of a steam packet company, and no company can ever abandon the business for which it was established, and undertake another. He could not say that Wood, V. C. and K. Bruce, L. J., were wrong in holding that the agreement in question was not *ultra vires*: for he thought that under that agreement the directors did not abandon the undertaking for which the company was established, and could not be said to engage in any new undertaking. He agreed that the case depended upon the fair construction of the third article of the memorandum of association. There was a difficulty in saying that the letting of so large a portion of the hotel to the Indian Board for so long a time was "carrying on the usual business of an hotel or tavern therein," but he conceived that it was (in the words of the third article) doing a thing *otherwise conducive to the attainment of the described objects of the undertaking*. An hotel to be used as such still remained in the hands of the company. That hotel was larger than any other hotel in England, and in that portion of the building the usual business of an hotel and tavern was to be carried on. The experienced hotel-keeper, who was to carry it on, swore that, in his opinion, it would be more advantageously carried on in that manner than if the whole building were from the first put under his management as master of the establishment. His lordship relied much upon the consideration that the arrangement was temporary and preliminary and conducive to the ultimate object of the whole building being devoted to the proper business of the hotel. From the large rent immediately to be received by the company for the occupation of the 169 rooms by the India Board, from the monopoly to be enjoyed by the company in supplying so many persons with refreshments, and from the fashionable reputation to be conferred upon the hotel by that association, the opinion ex-

pressed by the majority of the shareholders that the arrangement was beneficial to them was likely to be verified. That anticipation would not be sufficient if the original undertaking had been abandoned or if there had been any extension of the original undertaking, but as there was neither abandonment nor extension of the original undertaking, the arrangement might assist instead of obstructing the prosecution of the original undertaking. Lords Cranworth, Chelmsford and Kingsdown concurred in the judgment, and the decree, against which there was an appeal, was affirmed. *Ib.* pp. 716—720.

By a deed of settlement of a company its business was declared to be "to build or purchase and own or hire iron steam vessels, and to use or let upon hire the same for the purpose of transport of coals or other merchandize from any port or ports of the United Kingdom or elsewhere, to any other port or ports of the United Kingdom or elsewhere, and the powers of the directors were defined to be, "the building or purchasing or hiring of such steam vessels as they should see fit, the general conduct and management of the business of the company, and the controlling, managing and regulating in all other respects except as by the deed otherwise provided of all matters relating to the company and the affairs thereof." The directors, thinking it expedient to sell all the vessels belonging to the company, employed the plaintiff's ship-brokers to procure a purchaser. The plaintiff accordingly negotiated a sale of the vessels upon the terms fixed by the directors with a purchaser; the negotiation, however, went upon an objection urged by his solicitor, that the directors had no power to sell the whole of the vessels except in the event of the winding-up of the company with the consent of the shareholders, which had not been obtained: it was held, that the plaintiffs were not entitled to maintain an action against the directors upon an implied warranty that they had authority to sell, which in point of fact they had not. *Wilson v. Miers*, 10 C. B., N. S. 348; 3 L. T., N. S. 780.

At an extraordinary general meeting of a joint stock company established for granting insurance on lives, it was resolved to extend the business to marine insurances; the resolutions were afterwards confirmed; a deed embodying them was executed by some but not by all of the shareholders, and in the annual return to the joint stock companies registry office, the business of the company was stated to include marine insurances. The reports of the directors several times alluded to the extension of the business, and on one occasion a report, alluding to such extension, accompanied the dividend warrant. The business, as extended, was carried on for a year and a half, when the company was ordered to be wound up: it was held, that the above-mentioned circumstances were not sufficient to bind the general body of shareholders by acquiescence to the extension of business, which could

only be effected by a new deed executed by all the shareholders, consequently holders of marine policies would not come in as creditors of the company in respect of losses upon such policies, but the holders thereof were allowed to claim in respect of the premiums paid by them. *Re Phoenix Life Assurance Company, Burgess & Stork's Case*, 31 L. J., Ch. 749; *Balfour v. Sea, &c. Association*, 27 L. J., C. P. 17; *Ex parte P. Wales*, John. 80; *Ernest v. Nicholls*, 6 H. 419; 3 De G. & J. 660; 2 Halkett, 401. See *Bagshaw v. Eastern Union Railway Company*, 7 Hare, 114; Shelford on Law of Railways, pp. 171, 174, 620—625, 3rd ed., as to the obligation of companies to apply their funds to the purposes for which they were subscribed.

The court will not entertain a suit by a shareholder of a public company on behalf of himself and other shareholders to restrain the directors from doing acts which are alleged to be *ultra vires*, when the plaintiff is really suing by the direction of a rival company, and in order to protect their interest. *Forrest v. Manchester, Sheffield and Lincolnshire Railway Company*, 7 Jur. N. S. 387; 9 W. R. 818—Westbury, C.

(d) There being no prescribed amount of shares, the determination of the amount is left to the determination of the parties.

(e) See Table (A) pl. 53, *post*, whereby, until directors are appointed, the subscribers of the memorandum of association are to be directors. They are not required to hold shares, but provision may be made for that in the memorandum of association.

9. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things, (that is to say,)

Memorandum of association of a company limited by guarantee (a).

- (1.) The name of the proposed company, with the addition of the word "limited" as the last word in such name:
- (2.) The part of the United Kingdom, whether England, Scotland or Ireland, in which the registered office of the company is proposed to be situate:
- (3.) The objects for which the proposed company is to be established:

- (4.) A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards (*b*), for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount (*c*).

(*a*) This is a new provision.

(*b*) See sect. 38, pl. 1, *post*, p. 45.

(*c*) See sect. 90, *post*.

Memorandum of association of an unlimited company (*e*).

10. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association (*d*) shall contain the following things, (that is to say,)

- (1.) The name of the proposed company:
- (2.) The part of the United Kingdom, whether England, Scotland or Ireland, in which the registered office of the company is proposed to be situate:
- (3.) The objects for which the proposed company is to be established.

(*d*) See second schedule to this act, form (D), *post*.

(*e*) See 19 & 20 Vict. c. 47, s. 5.

Stamp, signature and effect of memorandum of association (*f*).

11. The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber (*g*) in the presence of and be attested by one witness at the least, and that attestation shall be a sufficient attestation in Scotland as well as in England and Ireland (*h*). It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum

contained, on the part of himself, his heirs, executors and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this act.

(f) See 19 & 20 Vict. c. 47, ss. 7, 11.

(g) By the 11th section of the 19 & 20 Vict. c. 47, any person signing a printed copy of the articles of association was to be deemed to have signed such articles if duly stamped, although such copy contained the names of more than seven persons as the "past and present directors," and only seven of them signed the memorandum registered, and the remainder had not taken the shares for which they subscribed; this did not invalidate the shareholders' subscriptions to such printed copies, nor did it afford any evidence of fraud, nor rebut the presumption raised by the register, that the persons whose names appeared thereon were the holders of the shares for which they were registered. *New Brunswick and Canada Railway and Land Company v. Boore*, 3 H. & N. 249; 27 L. J., Exch. 330.

(h) See sect. 23, *post*, p. 31.

12. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution (b) in manner hereinafter mentioned (c), as to increase its capital (d) by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but, save as aforesaid, and save as is hereinafter provided in the case of a change of name, no alteration shall be made by any company in the conditions contained in its memorandum of association.

Power of certain companies to alter memorandum of association (a).

(a) See 19 & 20 Vict. c. 47, s. 37.

(b) A company was incorporated under the 19 & 20 Vict. c. 47, as a limited company, for the purpose of conveying passengers and luggage in patent omnibuses. There were no special articles of association. A majority of more than three-fourths in number and value of the shareholders, present at a general meeting, passed a special resolution empowering the directors to borrow on debentures of the company any sums not exceeding in the whole a certain amount.

Some dissentient shareholders filed a bill on behalf of themselves and the other shareholders, except the directors, for an injunction to prevent such borrowing, as being *ultra vires*: it was held, by Kindersley, V. C., that the directors had power to raise money in the manner proposed, and an injunction was refused. The Court of Appeal affirmed that decision; but Knight Bruce, L. J., doubted whether such borrowing was an act for which a special resolution was a sufficient authority. *Bryon v. Metropolitan Saloon Omnibus Company*, 3 De G. & J. 123; 4 Jur. N. S. 1362; 27 L. J., Ch. 685.

(c) As to passing special resolutions, see *post*, sect. 50 *et seq.*

(d) As to increase of capital, see *post*, sect. 34.

Power of
companies
to change
name.

13. Any company under this act, with the sanction of a special resolution of the company passed in manner hereinafter mentioned, and with the approval of the board of trade testified in writing under the hand of one of its secretaries or assistant secretaries, may change its name, and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name (a).

(a) As to a special resolution, see sect. 50, *post*.

A company completely registered under 7 & 8 Vict. c. 110, could not alter its corporate name. *Reg. v. Registrar of Joint Stock Companies, Re Sheffield R. & C. Ins. Co.*, 10 Q. B. 839. The 12th section of the 18 & 19 Vict. c. 133, enacted, that no alteration made by virtue of that act in the name of any company should prejudice or affect any right which previously to such alteration had accrued to such company, but every such company should be entitled to all such remedies as they would have been entitled to if no such alteration had been made: it was held, that the rights of a company, which had obtained a certificate of complete registration with limited liability, against a surety on a bond entered into with them for

the faithful service of a clerk or an agent in respect of defalcations since the date of such certificate, remained unaffected by the change of name. *Groux's Improved Soap Company v. Cooper*, 8 C. B., N. S. 800.

Articles of Association (a).

14. The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient: the articles shall be expressed in separate paragraphs, numbered arithmetically; they may (b) adopt all or any of the provisions contained in the table marked (A) in the first schedule hereto; they shall, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Regulations to be prescribed by articles of association.

(a) Examples of memorandums of association and articles of association are given in the second schedule of this act.

(b) See *post*, sect. 22, p. 31.

15. In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the table marked (A) in the first sche-

Application of table (A)(c).

dule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

(c) See 19 & 20 Vict. c. 47, s. 9.

Stamp, signature and effect of articles of association (a).

16. The articles of association shall be printed, they shall bear the same stamp as if they were contained in a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and such attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: when registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this act; and all monies payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company, and in England and Ireland to be in the nature of a specialty debt (b).

(a) This differs from the corresponding sect. 11 in 19 & 20 Vict. c. 47.

(b) A person who has taken shares in a joint stock company must be considered to have actually executed the articles of association of such company, and will be fixed with notice of its contents. *New Brunswick and Canada Railway and Land Company (Limited) v. Conybeare*, 31 L. J., Ch. 297; 1 De G., F. & J. 578.

General Provisions.

Registration of memorandum of association and articles of association, with fees as

17. The memorandum of association and the articles of association, if any, shall be delivered to the registrar of joint stock companies hereinafter mentioned, who shall retain and register the

ame (b). There shall be paid to the registrar ^{in table} by a company having a capital divided into shares, ^{(B)(a).} in respect of the several matters mentioned in the table marked (B) in the first schedule hereto, the several fees therein specified, or such smaller fees as the board of trade may from time to time direct; and by a company not having a capital divided into shares, in respect of the several matters mentioned in the table marked (C) in the first schedule hereto, the several fees therein specified, or such smaller fees as the board of trade may from time to time direct: all fees paid to the said registrar in pursuance of this act shall be paid into the receipt of her Majesty's exchequer, and be carried to the account of the consolidated fund of the United Kingdom of Great Britain and Ireland.

(a) See 19 & 20 Vict. c. 47, s. 12.

(b) The 35th section, *post*, p. 39, provides a remedy for the improper entry or omission of the entry in the register.

A plaintiff in an action in any of the superior courts may *Mandamus*.

obtain a writ of mandamus commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested. 17 & 18 Vict. c. 125, s. 68; and see sects.

69—75, 77. The writ will not be granted to compel the specific performance of duties arising merely from a personal contract, as to enforce the execution of a lease from the plaintiff to the defendant in fulfilment of a contract between them. The act has not given to the Court of Queen's Bench the means of making the necessary inquiries, and appears to be confined to such duties as might have been enforced by the prerogative writ of mandamus. *Benson v. Paull*, 6 Ell. & Bl.

73. But where a company is incorporated by charter or act of parliament, whose duty it is to keep a register of shareholders and to insert therein the names of the proprietors, a mandamus will lie to compel the performance of such duty. *Morris v. Irish Land Company*, 8 Ell. & Bl. 512. Mandamus has been granted to a judgment creditor to allow the inspection of the register of shareholders. *Reg. v. Derbyshire, &c. Railway Company*, 3 Ell. & Bl. 784.

A mandamus may be obtained to compel a company to make an entry of the probate of the will of a deceased proprietor, and to register the name and place of abode of the executor as a proprietor of shares in the company; *Rex v. Worcester Canal Company*, 1 M. & R. 529; to supply the full number of directors in case of vacancies; *Thames Dock Company v. Rose*, 4 Man. & G. 559; 2 Dowl. N. S. 104; to re-

gister the transfer of shares; *Reg. v. Londonderry, &c. Railway Company*, 13 Q. B. 998; *Reg. v. Wing*, 16 Q. B. 645.

The deed of settlement of a company formed and completely registered under 7 & 8 Vict. c. 110, and afterwards under 19 & 20 Vict. c. 47, contained the following clause: "the books wherein the proceedings of the company are recorded shall be kept at the principal office of the company, and shall be open to the inspection of the shareholders every day of the year." The deed provided that separate books should be kept of the minutes of the proceedings at the general meetings of the shareholders, and of the minutes of the proceedings of the directors. A rule having been obtained for a mandamus to the company to grant to a shareholder inspection of the books of the minutes of the proceedings of the company: it was held, that the clause gave shareholders only power to inspect the books of minutes of the proceedings at the general meetings, not the book of minutes of the proceedings of the directors. *Reg. v. Mariquita Mining Company*, Ell. & Ell. 289; 5 Jur. N. S. 725; 28 L. J., Q. B. 67.

Upon application by motion for any writ of mandamus in the Court of Queen's Bench, the rule may in all cases be absolute in the first instance if the court shall think fit, and may be made returnable forthwith, whether in term or in vacation; but time may be allowed to return it, by the court or a judge, either with or without terms. C. L. P. Act, 1854, 17 & 18 Vict. c. 125, s. 76. See further as to mandamus, Selw. N. P. tit. *Mandamus*; Shelford's Law of Railways, pp. 558—579, 3rd ed.

Effect of
registra-
tion (a).

18. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this act or by the desire of the parties to be registered, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company (b), shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands (c), but with such liability on the part of the members to contribute to the assets of the company in the event

of the same being wound up as is hereinafter mentioned (*d*); a certificate of the incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this act in respect of registration have been complied with (*e*).

(*a*) See 19 & 20 Vict. c. 47, s. 13. 20 & 21 Vict. c. 14, s. 4. Certificate when void.

If a company is not authorized to be registered, Turner, L. J., considered it quite clear that the certificate of registration could be of no avail. *Re Northumberland and Durham District Banking Company*, 2 De G. & J. 371. It was decided that the certificate of the registrar of friendly societies was conclusive evidence of the society being legal. *Pare v. Clegg*, 7 Jur. N. S. 1136.

(*b*) A person having paid a deposit applied by letter for and thereby accepted shares in a company, but before any acceptance of his application or allotment of shares to him withdrew his application, he was held not to have been a shareholder in the company. *Re Cardiff and Caerphilly Iron Company, Re Gledhill, Ex parte Graham*, 7 Jur. N. S. 981; 30 L. J., Bank. 42, 861. Who are shareholders.

A person having received a prospectus of a company, with a printed form of application for shares, filled it up and signed it, requesting an allotment to him of a certain number of shares, and agreeing to accept such shares and to pay the future calls. He paid a deposit on these shares to the company's bankers, and received a receipt for the same. Shares were allotted to him, and a copy of the memorandum of association, with articles of association indorsed, were subsequently sent by the company to the applicant, with a form appended to be filled up by him, stating that he accepted the shares in the company and consented to be registered as a shareholder. He did not return or sign that form, but subsequently applied for interest warrants and share certificates, which were not delivered to him by reason of his omission to return the form of acceptance filled up and signed. His name, however, was entered in the register by the company, and notice of calls was given to him: it was held, in an action against him as a shareholder for calls, that, as he had not signed the written form of acceptance of shares sent him by the company for that purpose, he could not be said to have accepted the shares; for the 19 & 20 Vict. c. 47, schedule (B.) pl. 1; see *post*, provides that "no person shall be deemed to have accepted any share in the company unless he has testified his acceptance thereof by writing under his hand in such form as the company from time to time directs." The applicant consequently had not become a shareholder, as under sect. 19 of the 19 & 20 Vict. c. 47, acceptance of shares is necessary to constitute him a shareholder, and therefore he was not

liable to calls. *New Brunswick and Canada Railway and Land Company v. Muggeridge*, 4 H. & N. 160; 5 Jur. N. S. 1131; 28 L. J., Exch. 365, Exch. Cham.

Specific performance of agreement to take shares.

It was questioned whether the Court of Chancery will decree specific performance of an agreement to take shares in a company which were allotted on application. A shareholder in a public company applied to the directors for an allotment of new shares which they were authorized to issue, and signed an undertaking to accept the same or any less number that might be allotted to him, to pay the calls thereon when due, and to sign the articles of association when required. The shares applied for were duly allotted, and in the notification of allotment he was informed that the articles of association must be signed by him, and in default thereof the shares and deposit would be forfeited to the company. The articles of association contained no clause authorizing the forfeiture of shares for such a cause. The allottee having refused to sign the articles of association or to pay the calls which were from time to time made upon the shares, the company filed a bill for specific performance of the undertaking contained in his application for the shares: but it was held, on appeal, that the contract had been varied by the notification of the allotment, and that the bill could not be sustained. The company having delayed filing their bill for two years after the allottee's refusal to sign the articles: it was held, on appeal, that such delay was not in itself fatal to the plaintiff's case. *The Oriental Steam Company (Limited) v. Briggs*, 31 L. J., Ch. 241. Lord Westbury, L. C., observed, the letter of application for shares by the defendant, who was a shareholder, must be taken as an application for shares to which he was not entitled in his character of shareholder. He undertook to accept them or any less number, to pay the calls thereon, and to sign the articles of association. If this had been followed by a simple acceptance there would have been a complete contract. The contract alleged by the company, and the performance of which was desired, was constituted of the proposal contained in the letter and of the answer of the secretary, which was alleged to be an acceptance thereof. That answer informed him that 150 shares had been allotted to him in compliance with his request, and proceeded thus:—"The bankers' receipt must be exchanged, when required, for a share certificate; then the memorandum and articles of association must be signed, and in default thereof (*i. e.*, in default of all or any of the conditions that had been mentioned) the shares and deposit would be forfeited to the company." There had been a great deal of ingenious argument on the interpretation of this letter. First, it was said the last paragraph was an unauthorized addition. His Lordship could not listen to an argument of that kind. If the individual to whom a proposition was made returned an answer by the hand of an

agent, and the agent in that answer embodied, whether with or without authority, certain things accompanying the acceptance which were not warranted by the original proposal, that individual was not at liberty to say that what the agent had added was "not authorized by my instructions, and therefore his acceptance, which was by my direction, must be taken free and liberated from the addition which he had thought proper to make." It was impossible for the person to whom the letter of acceptance was addressed to know how much was authorized and how much was unauthorized, and therefore the whole letter must be taken by the individual who brought forward that letter as the acceptance of a proposal entitling him to the benefit of the contract. Then it was said that what was added to the letter was nothing more than an expression of what the law itself annexed, and therefore it might be brought under the common maxim—*Expressio eorum quæ tacite insunt nihil operatur*. (See Broom's Maxims, pp. 596, 598, 677, 3rd ed.) That interpretation of the letter would not be accepted; there was no law which would have authorized this addition to be made to a simple contract, viz., that in default of the thing specified being done the shares and deposit would be forfeited to the company. Then it was said that this was nothing more than a mere admonitory or friendly warning to General Briggs, and must not be considered as prejudicing or derogating from the antecedent simple acceptance. The same observation applied to that. It was impossible to say this was an unqualified simple acceptance; but it was extremely desirable, especially in this Court, where such contracts were spelt repeatedly out of letters, to adhere strictly to the rule of the court, that whoever brings forward a contract as constituted of a proposal on one side and an acceptance on the other should show that the acceptance was prompt, immediately given, unqualified, simple and unconditional. His Lordship could not attribute these qualities to this contract, as it was called, and could not therefore hold that it was a binding engagement, which, either in this or any other court, would amount to a binding contract on which an action would be maintained, or for the performance of which his Lordship would be bound to make a decree. *The Oriental Inland Steam Company v. Briggs*, 31 L. J., Ch. 246.

(c) By common law a corporation had the capacity to purchase lands for themselves and their successors. Litt. R. 49, 112, 114; 10 Rep. 30 b; 1 Bl. Comm. 478; see *post*, s. 21, p. 30; *Vigers v. Dean, &c. of St. Paul's*, L. J. 1849; Q. B. 103. The restrictions on their holding of lands without licence from the crown was imposed by a variety of statutes. See Shelford on Mortmain, 1—21. The power to hold lands given by this and the 191st section, leaves it in doubt whether or not companies incorporated under this act can hold lands without a licence in mortmain. It has been usual in acts of

Capacity of
corporation
to hold lands.

parliament giving corporations a power to acquire and hold lands to dispense with a licence in mortmain. See 25 & 26 Vict. c. 61, s. 9, pl. 2.

Power to hold lands under previous acts.

By the 25th section, 7 & 8 Vict. c. 110, a company completely registered was empowered to purchase lands and hereditaments in the name of the company or of the trustees or trustee thereof, as places of occupation for the business of the company, and also (but nevertheless with a licence general or special for that purpose to be granted by the board of trade first obtained) such other lands and hereditaments as the nature of the business of the company might require.

Doubts having arisen as to the meaning of that provision, it was declared by 10 & 11 Vict. c. 78, s. 1, that any company completely registered, being desirous of holding lands, might apply to the board of trade for a licence, who were empowered, if they thought fit, to grant the same.

As to licences to joint-stock companies to hold land in pursuance of last statute, see parliamentary paper, 16th February, 1852, No. 24.

The members or shareholders of a company incorporated under the 19 & 20 Vict. c. 47 and 20 & 21 Vict. c. 14, have no such freehold interest, legal or equitable, in lands held by the corporation as to entitle them to be registered as electors, their rights being confined to a proportionate share in the profits of the company. *Bulmer v. Norris*, 9 C. B., N. S. 19; 1 K. & G. 321; 7 Jur. N. S. 342; 30 L. J., C. P. 25.

(d) See sects. 75, 102, *post*.

Liability of body corporate.

A company formed under this act becomes a body corporate, so that no liability attaches on its members to the creditors of the corporation, whether the company is in operation or being wound up. The creditors' remedy is against the property of the corporation. The liability of the members of a company being wound up will be found in the 38th section, *post*, pp. 45, 46.

Evidence.

(e) In an action against a company registered under the 19 & 20 Vict. c. 47, for breach of contract to employ and pay for services, the certificates for shares issued under its seal are sufficient evidence as against the company that it is registered. *Mostyn v. Calcott Hall Mining Company*, 1 F. & F. 334, Willes.

Under resolutions before registration, evidence, if ratified after registration, even though relating to fixtures, the company having taken to and partly paid for them, and resolutions, of which the result had been communicated to the plaintiff, were held evidence of an agreement, but not requiring a stamp. *Ib*.

Copies of memorandum and articles to be given to members (a).

19. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his

request, on payment of the sum of one shilling or such less sum as may be prescribed by the company for each copy ; and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member, in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding one pound (*b*).

(*a*) See 19 & 20 Vict. c. 47, s. 27, 20 & 21 Vict. c. 14, s. 16.

(*b*) The mode of recovering penalties is prescribed by sect. 65, *post*.

20. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive [except in a case where such subsisting company is in the course of being dissolved and testifies its consent in such manner as the registrar requires]; and if any company, through inadvertence or otherwise, is [without such consent as aforesaid] registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the registrar, change its name, and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case ; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Prohibition against identity of names in companies (*c*).

(*c*) The 6th section of 19 & 20 Vict. c. 47, does not contain the words in brackets.

In the act to amend the law relating to the fraudulent Act as to fraudulent

trade marks
extends to
bodies cor-
porate, &c.

marking of merchandize, 25 & 26 Vict. c. 88, the word person in that act includes any person, whether a subject of her Majesty or not, and any body corporate or body of the like nature, whether constituted according to the law of this country, or of any of her Majesty's colonies or dominions, according to the law of any foreign country, and also any company, association or society of persons, whether the members thereof be subjects of her Majesty or not, or some of such persons subjects of her Majesty, or some of them not, and whether such body corporate, body of the like nature, company, association or society be established to carry on business within her Majesty's dominions or elsewhere, or partly within her Majesty's dominions, and partly elsewhere.

As to the infringement of trade marks, see *Purser v. Brain*, 17 L. J., Ch. 141; *Knott v. Morgan*, 2 Keen, Q. B.; *Parry v. Truefitt*, 6 Beav. 66; *Croft v. Day*, 7 Beav. 84; *Spottiswood v. Clark*, 2 Phill. C. C. 154; *Franks v. Weaver*, 10 Beav. 297; *Burgess v. Burgess*, 3 De G., M. & G. 896; *London and Provincial Land Assurance Society v. London and Provincial Joint-Stock Life Insurance Company*, 11 Jur. 938; 18 C. B. pp. 95—97, note.

Action for
assuming an
identical
name.

In an action against a banking corporation the declaration stated that the plaintiff had established a bank, called "The Bank of London," at great expense, and caused the name to be published and affixed to the offices of the bank and prospectuses to be issued, and that the defendants afterwards fraudulently established another bank under the style of "The Bank of London," in imitation of the Bank of London of the plaintiff, by reason of which he was prevented from carrying on his business at his bank so fully as he otherwise would, and was deprived of gains and profits: it was held, that the declaration was bad for not showing that the plaintiff carried on the business of a banker. *Jervis, C. J.*, said, all that appears is, that the plaintiff was the promoter of a certain bank, called "The Bank of London," which he proposed to establish in the city of London, and that he incurred expense in putting up the name on a brass plate and in publishing prospectuses, and that some one else had beaten him in the race and established a bank under the same name by virtue of letters patent. It did not appear that the plaintiff had even carried on the business of banking, or that he had a single customer, or that he was in a position to be damnified by the acts of the defendants. *Lawson v. Bank of London*, 18 C. B. 84; 2 Jur. N. S. 18; 25 L. J., C. P. 188.

Prohibition
against cer-
tain com-
panies hold-
ing land (a).

21. No company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof,

shall, without the sanction of the board of trade, hold more than two acres of land ; but the board of trade may, by licence (*b*) under the hand of one of their principal secretaries or assistant secretaries, empower any such company to hold lands in such quantity and subject to such conditions as they think fit (*c*).

(*a*) This corresponds with the 38th section, 19 & 20 Vict. c. 47.

(*b*) See form (F) in second schedule to this act.

(*c*) The quantity of land which may be granted for sites of schools, &c. is limited to two acres. 15 & 16 Vict. c. 49.

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

22. The shares or other interest of any member in a company under this act shall be personal estate (*e*), capable of being transferred in manner provided by the regulations of the company (*f*), and shall not be of the nature of real estate, and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

Nature of interest in company (*d*).

(*d*) See 19 & 20 Vict. c. 47, s. 15.

(*e*) See note, *post*.

(*f*) See table (A) to this act, pl. 8—16.

23. The subscribers of the memorandum of association of any company under this act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned (*h*) ; and every other person who has agreed to become a member of a company under this act, and whose name is entered on the

Definition of "member" (*g*).

register of members, shall be deemed to be a member of the company.

(g) See 19 & 20 Vict. c. 47, ss. 8, 19.

(h) See sect. 25.

Transfer by
personal re-
presentative.

24. Any transfer of the share or other interest of a deceased member of a company under this act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer (a).

(a) See table (A) to this act, pl. 8—16.

Register of
members (b).

25. Every company under this act shall cause to be kept in one or more books a register of its members (c), and there shall be entered therein the following particulars:—

- (1.) The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number; and of the amount paid or agreed to be considered as paid on the shares of each member:
- (2.) The date at which the name of any person was entered in the register as a member:
- (3.) The date at which any person ceased to be a member:

And any company acting in contravention of this section (d) shall incur a penalty (e) not exceeding five pounds for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company who shall knowingly and wilfully authorize or permit such contravention shall incur the like penalty.

(b) See 19 & 20 Vict. c. 47, s. 16.

(c) See sect. 31, *post*, p. 36, n.

(d) See sect. 18, 19 & 20 Vict. c. 47.

(e) The mode of recovering penalties is prescribed by sect. 65, *post*.

26. Every company under this act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year (*b*), the first of such ordinary general meetings is held, are members of the company; and such list shall state the names, addresses and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:— (*c*)

Annual list of members (*a*).

(1.) The amount of the capital of the company, and the number of shares into which it is divided;

(2.) The number of shares taken from the commencement of the company up to the date of the summary;

(3.) The amount of calls made on each share;

(4.) The total amount of calls received;

(5.) The total amount of calls unpaid;

(6.) The total amount of shares forfeited;

(7.) The names, addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the registrar of joint stock companies.

(*a*) See 19 & 20 Vict. c. 47, s. 17, which is similar to this section.

(*b*) A general meeting of every company under this act shall be held once at least in every year, *post*, sect. 49, p. 52.

(*c*) Whereas the licences and certificates granted to bankers and persons acting as bankers in Great Britain and Ireland respectively, by or under the authority of the com-

Licences to joint stock banks not required to

specify the names of more than six persons.

missioners of inland revenue, are required by law to specify amongst other things the names and places of abode of all the persons composing the respective companies or partnerships to whom they are granted: be it enacted, that in any case where a company or co-partnership of bankers consists of more than six persons it shall be sufficient to specify in any such licence or certificate the names and places of abode of any six or more of such persons who may be presented to the commissioners or their officer or whom they or he may select for the purpose, and to grant the licence or certificate to them as and for the whole of the company or co-partnership, or otherwise to specify only the name or style of the company or co-partnership, and to grant the licence or certificate to such company or co-partnership in and by the said name or style as the commissioners or their officer shall think fit; and every such licence and certificate respectively shall be as good, valid and available as if the names and places of abode of all the members of the company or co-partnership had been specified therein and the licence had been granted to them, anything in any act of parliament to the contrary notwithstanding; but this shall not in any way alter or affect the provisions of any act of parliament whereby any banking company or co-partnership is required to make any account or return of the names and places of abode of all the members or partners of such company or co-partnership, and any other particulars relating thereto. 24 & 25 Vict. c. 91, s. 35.

Penalty on company, &c. not keeping a proper register (a).

27. If any company under this act, and having a capital divided into shares, make default in complying with the provisions of this act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the registrar, such company shall incur a penalty (b) not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

(a) See 19 & 20 Vict. c. 47, s. 18.

(b) The mode of recovering penalties is prescribed by sect. 65, *post*.

Company to give notice of consolidation or of conversion of capital into stock (c).

28. Every company under this act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of

its capital into stock, shall give notice to the registrar of joint stock companies of such consolidation, division or conversion, specifying the shares so consolidated, divided or converted.

(c) See 20 & 21 Vict. c. 14, s. 6.

29. Where any company under this act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the registrar, all the provisions of this act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required (b).

Effect of conversion of shares into stock (a).

(a) See 20 & 21 Vict. c. 14, ss. 5, 7.

(b) *Ante*, sect. 26, p. 33.

30. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies under this act and registered in England or Ireland.

Entry of trusts on register (c).

(c) This section does not contain the whole of the corresponding sections of 19 & 20 Vict. c. 47, s. 19, and 20 & 21 Vict. c. 49, s. 15.

See 8 & 9 Vict. c. 16, s. 20. As trusts are not recognized by companies, it is obvious that persons beneficially interested in shares standing in the names of trustees are much exposed to their dishonesty. By 5 Vict. c. 5, s. 4, the Court of Chancery, upon the application of any party interested by motion or petition in a summary way without bill filed, may restrain the Bank of England, or other company, whether incorporated or not, from permitting the transfer of any stock in the public funds, or any stock or shares in any public company, or from paying any dividend or dividends due or to become due thereon, and every order of the court upon such motion or petition should specify the amount of the stock or the particular shares to be affected thereby, and the name or names

Injunction to restrain the transfer of shares.

of the person or persons, body politic or corporate in which the same should be standing.

Practice
in obtaining
injunction.

An application to the court under sect. 4 of 5 Vict. c. 5, must be founded upon an affidavit verifying the special grounds upon which it proceeds. *Ex parte Field*, 1 Y. & C. Ch. Ca. 1; *Re Marquis of Hertford*, 1 Hare, 586. And when the order has been made, as it was not the intention of the legislature to do more than protect the stock until the party could assert his right in the ordinary way, if the opposite party move to dissolve the injunction and the court sees that there has been great neglect on the part of the person who obtained the order, and that any extension of time would be oppressive to the party restrained, it will not as of course give further time for filing the bill. *Re Marquis of Hertford*, 1 Hare, 584; 1 Phill. C. C. 203. When a bill has been filed and an answer put in and the defendant moves to discharge the restraining order, the plaintiff may file affidavits in opposition to the answer, and is not confined to the merits disclosed in the answer. *Re Marquis of Hertford*, *supra*; see now 15 & 16 Vict. c. 86, s. 59; Lewin on Trusts, 653, 4th ed. In the case of stock in the Bank of England a further remedy is given by distringas. See 5 Vict. c. 5, s. 5, Consol. Orders of the Court of Chancery, 1860, No. XXVI.

Shares with-
in the Trust-
tee Act.

Shares are within the Trustee Act, 1850, 13 & 14 Vict. c. 60, the 2nd section of that act providing "that the word 'stock' shall mean any fund, annuity or security transferable in books kept by any company or society established or to be established or transferable by deed alone or by deed accompanied with other formalities, and any share or interest therein." Shares in a joint-stock banking company come within the above definition of stock. *Re Angelo*, 5 De G. & Sm. 278; 16 Jur. 831. Companies are bound to comply with orders under the Trustee Act, 1850, and are indemnified for acts done pursuant thereto. 15 & 16 Vict. c. 55, ss. 6, 7; see Shelford's Real Prop. Stat. pp. 605—635, 6th ed. Shares in registered ships come within the above definition of stock. 18 & 19 Vict. c. 91, s. 10. See Lewin on Trusts, pp. 653—656, 4th ed.

A. purchased shares in a bank and had them transferred into the joint names of herself and B. By the rules of the bank there was to be no benefit of survivorship between shareholders; B. survived A. and there being clear evidence that A. intended B. to take beneficially, and not as a trustee: it was held, that the legal title was complete in B., and that she was entitled to the shares by survivorship. *Garrick v. Taylor*, 29 Beav. 79; 7 Jur. N.S. 116; 30 L. J., Chanc. 211; 9 W. R. 181. Affirmed on appeal by Lords Justices, 10 W. R. 49.

Certificate of
shares or
stock.

31. A certificate, under the common seal of the company, specifying any share or shares or stock

held by any member of a company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified (a).

(a) This section corresponds with sect. 21 of the 19 & 20 Vict. c. 47. A register of shareholders under that act was evidence of the ownership of a share, although not authenticated by the seal of the company. *Cornwall Mining Great Consolidated Lead and Copper Mining Company v. Bennett*, 5 H. & N. 432; 6 Jur. N. S. 539; 29 L. J., Exch. 157; see sect. 25, *ante*, p. 32.

32. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned; except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe, for each inspection; and every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied; if such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues (c), and every director and manager of the company who shall knowingly authorize or permit such refusal shall incur the like penalty (d); and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the vice warden of the stannaries, in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

Inspection of register (b).

(b) See 19 & 20 Vict. c. 47, s. 23.

(c) This part of the section is in effect the same as the 23rd section of 19 & 20 Vict. c. 47.

Part II.—Distribution of Capital.

(d) The mode of recovering penalties is prescribed by the 65th section, *post*.

Validity of
calls under
19 & 20 Vict.
c. 47.

A company registered under the 19 & 20 Vict. c. 47, brought an action against a shareholder for calls under the 22nd section. The company was formed to consist of 240 shares of 20*l.* each; it was provided by the articles of association, art. 44, the number of the directors shall be five, three of whom shall form a quorum, and the names of the first directors shall be determined by the subscribers of the memorandum of association, art. 45. Until directors are appointed the subscribers of the memorandum of association shall for all purposes of this act be deemed to be directors. Seven persons subscribed the memorandum of association. At a meeting at which three only of them were present, five of their number, of whom the defendant was one, were appointed directors of the company. The defendant attended meetings as a director. A call was made at a meeting at which three only of the persons so chosen as directors were present. At this time only sixty-eight shares had been subscribed for. It was held, that the defendant was not liable for calls, because the directors had not been duly appointed, and the persons who made the calls were not a quorum of the subscribers of the memorandum of association. *Howbeach Coal Company v. Teague*, 5 H. & N. 151; 6 Jur. N. S. 275; 29 L. J., Exch. 137; 8 W. R. 264. Martin, B., expressed an opinion that if a company is formed to consist of a certain number of shares, and hardly a fourth of the shares is taken up, it cannot be competent to a small portion of such shareholders to make calls and insist on carrying on the company. *Ib.*

Power to
close regis-
ter (a).

33. Any company under this act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

(a) See 19 & 20 Vict. c. 47, s. 24, and 20 & 21 Vict. c. 14, s. 9.

Notice of in-
crease of
capital and
of members
to be given
to regis-
trar (b).

34. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the registrar in the case of an increase of capital, within

fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the registrar shall forthwith record the amount of such increase of capital or members; if such notice is not given within the period aforesaid, the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty (c).

(b) See 19 & 20 Vict. c. 47, s. 37.

(c) The mode of recovering penalties is prescribed by the 65th section, *post*.

35. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, as respects companies registered in England or Ireland, by motion (a) in any of her Majesty's superior courts of law or equity, or by application to a judge sitting in chambers, or to the vice warden of the stannaries in the case of companies subject to his jurisdiction, and as respects companies registered in Scotland by summary petition to the court of session, or in such other manner as the said courts may direct, apply for an order of the court that the register may be rectified; and the court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application or petition, and any damages the party aggrieved may have sus-

Remedy for improper entry or omission of entry in register.

tained (b); the court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register; provided that the court, if a court of common law, may direct an issue to be tried, in which any question of law may be raised, and a writ of error or appeal, in the manner directed by "The Common Law Procedure Act, 1854," shall lie (c).

(a) This will supersede the necessity of an application for a mandamus so far as regards the objects herein mentioned. See sect. 17, *ante*, p. 23, n. (b).

(b) This part of the section differs from 19 & 20 Vict. c. 47, s. 25, under which power was subsequently given, by 20 & 21 Vict. c. 14, s. 9, to the court to decide disputed questions, in consequence of the decision of Wood, V. C., in *British Sugar Refining Company*, 3 Kay & J. 408.

Amending
the register
of share-
holders.

A shareholder in a mining company, on the cost-book principle, retired from it under a provision in the cost-book enabling a shareholder to surrender his shares. A few weeks afterwards the company was registered under the 19 & 20 Vict. c. 47, and the shareholder's name was entered in the register and returned in the list of shareholders. An order having been subsequently made for winding up the company, the commissioner placed the shareholder's name on the list of contributories: it was held, that the shareholder's name ought never to have been on the register of shareholders, and ought to be removed from it under the power given by the corresponding section 25 of the 19 & 20 Vict. c. 47, of amending the register, and that it ought also to be removed from the list of contributories. It was questioned whether the name of a registered shareholder can be removed from the list of contributories without an amendment of the register. *Birch's Case*, 2 De G. & J. 10. Upon that section it was said that if there was a serious question as to whether a person ought to be registered or not, the court would not decide such question in a summary way by petition. But, on the other hand, if a court of equity had before it the materials for deciding such question, it would, if possible, avail itself of the power conferred upon it by the legislature, and order it to be rec-

tified, so that substantial justice might not be obstructed by the actual state of the register. *Birch's Case*, 2 De G. & J. 10.

A company being in the course of formation under 19 & 20 Vict. c. 47, a person applied for shares by a note in writing, by which he agreed to accept them and pay the deposit on them. Shares were allotted to him accordingly, and he paid the deposit, but no certificates were given to him. His name was not entered in the register of shareholders, but only in a book in which the names of persons to whom shares had been allotted were inscribed, the shares to which they were entitled not being distinguished therein by numbers. An order having been made for winding up the company: it was held, that the register ought to be amended by inserting the applicant's name, and that he ought to be on the list of contributories. *Re West Ham Distillery Company, Ex parte Whittet*, 2 De G. & J. 577.

The court has no jurisdiction to interfere with the registrar's certificate of registration of a banking company, which was registered under the Joint Stock Companies Acts, 1856 and 1857, after it had suspended payments, except in the case of fraud. *Re Northumberland and Durham District Banking Company*, 27 L. J., Ch. 354.

The 25th section of the 19 & 20 Vict. c. 47, enabling a shareholder, whose name was without sufficient cause omitted to be entered in the company's register, to apply by motion for an order that the register might be rectified, was not meant to give every shareholder *ex debito justitiæ* that summary remedy. The object of that section was to enable the court to avoid the inconvenience and injustice which occasionally arose from capricious or frivolous objections on the part of companies to complete the registration of their shareholders. It was not intended that, in the event of there being a serious question to be tried, the matter should be disposed of summarily. *Re British Sugar Refining Company, Ex parte Faris*, 3 Kay & J. 408; 26 L. J., Ch. 369. But afterwards, by sect. 9 of the 20 & 21 Vict. c. 14, the court might, in any proceeding under the 25th section of the 19 & 20 Vict. c. 47, decide on any question relating to the title of any person who was party to such proceeding to have his name entered in or erased from the register, whether such question arose between two or more holders or alleged holders of shares or stock, or between any holders or alleged holders of shares or stock and the company; and generally, the court may in such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register.

A holder of shares in a company, by entrusting his broker with blank transfers signed by him, and affording him an opportunity of obtaining access to a box containing the certificates for the shares, enabled him by forgery and fraud to induce the company to register the transfers of the shares in

Transfers signed by vendors with blanks.

Part II.—Distribution of Capital.

the names of *bonâ fide* purchasers. A motion under the 19 & 20 Vict. c. 47, s. 25, and 20 & 21 Vict. c. 14, ss. 8, 9, to rectify the register by replacing thereon the name of the original shareholder, failed, the court being equally divided; Erle, C. J., and Keating, J., holding that the applicant had precluded himself by his negligence from availing himself of the equitable jurisdiction of the court; Willes, J., and Byles, J., holding that the property in the shares had not been changed by the forged transfers, and that he was entitled to have his name restored to the register. *Ex parte Swan, Re North British Australian Company*, 7 C. B., N. S. 400; 30 L. J., C. P. 113.

As to liability to owner of shares transferable by deed only in respect of a transfer effected by an agent by means of forms of transfer executed in blank, see *Swan v. North British Australian Company (Limited)*, 31 L. J., Exch. 425.

Certain stock of a railway company was standing in the books of the company in the names of two persons, one of whom, by a transfer executed by himself, and to which he forged the name of the other party, transferred the stock to a third person, whose name was substituted for the two original names. The party whose name was forged died soon afterwards: it was held by the House of Lords, affirming the decision of the Master of the Rolls, 6 Jur. N. S. 595; 29 L. J., Ch. 731; 28 Beav. 287, that the personal representative of such person had a legal right to call on the company to replace the stock, though the right of action was gone. *Midland Railway Company v. Taylor*, 31 L. J., Ch. 336.

A., being a holder of shares in a company upon which 20*l.* had been paid, and of other shares upon which 2*l.* had been paid, instructed his broker to sell the latter. A. subsequently, on the application of his broker, executed deeds of transfer in which blanks were left for the name of the transferee, the number of shares and their numbers. The transfers bore stamps of a sufficient amount to cover a transfer of A.'s 20*l.* shares. After A. had executed the transfers, his broker fraudulently inserted therein the numbers of A.'s 20*l.* shares, and sold such 20*l.* shares on the Stock Exchange to a *bonâ fide* purchaser, who, being a jobber, took the transfer deeds with the transferee's name still in blank, with the intention, on reselling the shares, to insert in such transfer deeds the name of the purchaser from him. Upon a bill by A., it was held (affirming the decision of Wood, V. C., 5 Jur. N. S. 331; 28 L. J., Ch. 285), that the deeds of transfer which had been executed by A. were void against him, and that he was entitled to the shares expressed to be thereby transferred, and to have his name restored to the register of shareholders of the company. *Taylor v. Great Indian Peninsula Railway Company*, 5 Jur. N. S. 1087; 28 L. J., Ch. 709; 4 De G. & J. 559. See *Hibblewhite v. M'Morine*, 6 M. & W. 200; *Morris v. Cannan*, 6 L. T., N. S. 17.

Courts of law and equity must adopt the same course of ascertaining who has the title, and of making and refusing an order accordingly, but with this obvious consequence, that in the case of an application to a court of law such court must regard the legal as well as the equitable title. The court will not make an order to rectify where it appears that, at the time of the application, an action by the company is pending against the appellant for calls upon the shares, alleged to have been due before and at the time of the transfer. *Ex parte Harris, Re Anglo-French Porcelain Company*, 5 H. & N. 809; L. J., Exch. 1860, p. 364.

(c) By the Common Law Procedure Act, 1854, 17 & 18 Vict. c. 125, s. 32, error may be brought upon a judgment upon a special case in the same manner as upon a judgment upon a special verdict, unless the parties agree to the contrary; and the proceedings for bringing a special case before the court of error shall, as nearly as may be, be the same as in the case of a special verdict, and the court of error shall either affirm the judgment or give the same judgment as ought to have been given in the court in which it was originally decided, the said court of error being required to draw any inferences of fact from the facts stated in such special case which the court where it was originally decided ought to have drawn.

Sect. 33. In every rule nisi for a new trial, or to enter a verdict or nonsuit, the grounds upon which such rule shall have been granted shall be shortly stated therein.

Sect 34. In all cases of rules to enter a verdict or nonsuit upon a point reserved at the trial, if the rule to show cause be refused, or granted and then discharged or made absolute, the party decided against may appeal.

Sect. 35. In all cases of motions for a new trial upon the ground that the judge has not ruled according to law, if the rule to show cause be refused, or if granted be then discharged or made absolute, the party decided against may appeal, provided any one of the judges dissent from the rule being refused, or when granted being discharged or made absolute, as the case may be, or provided the court in its discretion think fit that an appeal should be allowed; provided, that where the application for a new trial is upon matter of discretion only, as on the ground that the verdict was against the weight of evidence or otherwise, no such appeal shall be allowed.

Sect. 36. The Court of Error, the Exchequer Chamber and the House of Lords shall be courts of appeal for the purposes of this act.

Sect. 37. No appeal shall be allowed unless notice thereof be given in writing to the opposite party or his attorney, and to one of the masters of the court, within four days after the decision complained of, or such further time as may be allowed by the court or a judge.

Sect. 38. Notice of appeal shall be a stay of execution, Bail.

Error may be brought on a special case.

Grounds to be stated in rule nisi for new trial.

If rule nisi refused party may appeal.

Appeal upon rule discharged or absolute.

Courts of error to be courts of appeal.

Notice of appeal.

provided bail to pay the sum recovered and costs, or to pay costs where the appellant was plaintiff below, be given in like manner and to the same amount as bail in error, within eight days after the decision complained of or before execution delivered to the sheriff.

Form of appeal.

Sect. 39. The appeal hereinbefore mentioned shall be upon a case to be stated by the parties, and in case of difference to be settled by the court or a judge of the court appealed from, in which case shall be set forth so much of the pleadings, evidence and the ruling or judgment objected to as may be necessary to raise the question for the decision of the court of appeal.

Rule nisi granted on appeal how disposed of.

Sect. 40. When the appeal is from the refusal of the court below to grant a rule to show cause, and the court of appeal grant such rule, such rule shall be argued and disposed of in the court of appeal.

Judgment of court of appeal.

Sect. 41. The court of appeal shall give such judgment as ought to have been given in the court below, and all such further proceedings may be taken thereupon as if the judgment had been given by the court in which the record originated.

Powers of court of appeal as to costs and otherwise.

Sect. 42. The court of appeal shall have power to adjudge payment of costs and to order restitution, and they shall have the same powers as the court of error in respect of awarding process and otherwise.

Error upon award of trial *de novo*.

Sect. 43. Upon an award of a trial *de novo* by any one of the superior courts, or by the court of error, upon matter appearing upon the record, error may at once be brought, and if the judgment in such or any other case be affirmed in error, it shall be lawful for the court of error to adjudge costs to the defendant in error.

Payment of costs upon new trial on matter of fact.

Sect. 44. When a new trial is granted on the ground that the verdict was against evidence, the costs of the first trial shall abide the event, unless the court shall otherwise order.

Affidavits on new matter.

Sect. 45. Upon motions founded upon affidavits it shall be lawful for either party, with leave of the court or a judge, to make affidavits in answer to the affidavits of the opposite party upon any new matter arising out of such affidavits, subject to all such rules as shall hereafter be made respecting such affidavits.

Court of Chancery to determine legal rights.

It is to be observed, that by the Chancery Regulation Act, 1862, 25 & 26 Vict. c. 42, s. 1, in all cases in which relief or remedy, within the jurisdiction of the Courts of Chancery (which includes the Court of Chancery of the county palatine of Lancaster) respectively, is or shall be sought in any cause or matter instituted or pending in either of the said courts, and whether the title to such relief or remedy be or be not incident to or dependent upon a legal right, every question of law or fact cognizable in a court of common law, on the determination of which the title to such relief or remedy

depends, shall be determined by or before the same courts. See *Baylis v. Watkins*, 8 Jur. N. S. 1165; *Copeland v. Webb*, 11 W. R. 134; *Re Hooper*, *Ib.* 130. The 2nd section provides that where questions of fact may be more conveniently tried at assizes, issues may be directed.

36. Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the registrar, the court shall, by its order, direct that due notice of such rectification be given to the registrar.

Notice to registrar of rectification of register (z).

(z) This is new.

37. The register of members shall be *primâ facie* evidence of any matters by this act directed or authorized to be inserted therein (b).

Register to be evidence (a).

(a) The words *primâ facie* are not contained in the 26th section, 19 & 20 Vict. c. 47.

(b) See sect. 25, *ante*, pp. 32.

Liability of Members.

38. In the event of a company formed under this act being wound up, every present and past member of such company shall be liable (d) to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, (that is to say,)

Liability of present and past members of company (c).

(1.) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up:

(2.) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member (e):

(3.) No past member shall be liable to contribute to the assets of the company unless it appears to the court that the existing mem-

Part II.—Distribution of Capital.

bers are unable to satisfy the contributions required to be made by them in pursuance of this act :

- (4.) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member :
- (5.) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association (*f*) :
- (6.) Nothing in this act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract (*g*) :
- (7.) No sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company ; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributors amongst themselves (*h*).

(*c*) This is a new provision. See 19 & 20 Vict. c. 47, ss. 62, 63.

(*d*) See sect. 7, *ante*, p. 13.

(*e*) See *post*, table A. pl. 9, by which a transferor of shares is to continue a holder of such shares until the name of the transferee shall be entered in the register book.

(*f*) See *ante*, sect. 9, p. 17.

The unlimited liability of a company under the 25th section of 7 & 8 Vict. c. 110, might be restricted by express provision.

(*g*) A policy of insurance duly executed by three directors

of an insurance company contained a provision that the policy should not be construed to render liable the proprietors of the company beyond the amount of their respective shares, but that the capital stock of the company should alone be liable to answer all claims in respect of the policy. The plaintiff having obtained judgment against the company: it was held, that by the terms of the policy the plaintiff was precluded from taking legal proceedings against the individual subscribers, and could not therefore issue execution against an individual shareholder under 7 & 8 Vict. c. 110, s. 68. *Halkett v. Merchant Traders' Ship Loan and Insurance Association*, L. J. 1850, Q. B. 59; 13 Q. B. 960; *Hassell v. Same*, 4 Exch. 525; *Durham's Case*, 4 Kay & J. 517; *Re Athenæum Life Society*, *Ex parte Prince of Wales Life, &c. Assurance Company*, 1 Johns. 80; 5 Jur. N. S. 558; 3 De G. & J. 558; see *Talbot's Case*, 5 De G. & Sm. 386; *Evans v. Coventry*, 2 Jur. N. S. 557.

(h) See *post*, sect. 101, as to the power of the court to order payment of debts by a contributory.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors.

39. Every company under this act shall have a registered office to which all communications and notices may be addressed: if any company under this act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on (b).

(a) See 19 & 20 Vict. c. 47, s. 28.

(b) In this and the 19th section a penalty is imposed on the company alone, but in sects. 25, 27, 32, 34, a penalty is imposed on the directors. The mode of recovering penalties is prescribed by the 65th section, *post*.

Registered office of company (a).

40. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him: until such notice is given the company shall not be deemed to

Notice of situation of registered office (d).

have complied with the provisions of this act with respect to having a registered office.

(d) See 19 & 20 Vict. c. 47, s. 29.

Publication
of name by
a limited
company (a).

41. Every limited company under this act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements and other official publications of such company, and in all bills of exchange, promissory notes, indorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(a) See 19 & 20 Vict. c. 47, s. 30.

Penalties on
nonpublica-
tion of
name (b).

42. If any limited company under this act does not paint or affix, and keep painted or affixed, its name in manner directed by this act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall be liable to the like penalty; and if any director, manager or officer of such company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement or other official publication of such company, or signs or authorizes to be signed on behalf of such company any bill of exchange (c), promissory note, indorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or

letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company (*d*).

(*b*) See 19 & 20 Vict. c. 47, s. 31.

(*c*) See sect. 47, *post*, n.

(*d*) See *Penrose v. Martyn*, El., Bl. & El. 499; *post*, p. 51, n. (*a*).

43. Every limited company under this act shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge: if any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding fifty pounds: the register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues (*a*); and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the vice-warden of the stannaries in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register (*b*).

Register of mortgages.

(a) The mode of recovering penalties is prescribed by the 65th section, *post*, p. 70.

(b) See s. 32, *ante*, p. 37.

Certain companies to publish statement entered in schedule.

44. Every limited banking company and every insurance company, and deposit, provident or benefit society under this act shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D. in the first schedule hereto (c), or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on, and if default is made in compliance with the provisions of this section the company shall be liable to a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding sixpence.

(c) See *post*.

List of directors to be sent to registrar.

45. Every company under this act, and not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the registrar of joint stock companies a copy of such register, and shall from time to time notify to the registrar any change that takes place in such directors or managers.

Penalty on company not keeping register of directors.

46. If any company under this act, and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of such register to the registrar in compliance with the foregoing rules, or in notify-

ing to the registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty (*d*).

(*d*) The mode of recovering penalties is prescribed by the 65th section, *post*.

47. A promissory note or bill of exchange shall be deemed to have been made, accepted or indorsed on behalf of any company under this act, if made, accepted or indorsed in the name of the company (*a*) by any person acting under the authority of the company (*b*), or if made, accepted or indorsed by or on behalf or on account of the company, by any person acting under the authority of the company.

Promissory notes and bills of exchange.

(*a*) The following promissory note was signed by three persons describing themselves as "directors" of a company, incorporated with limited liability under the 19 & 20 Vict. c. 47, and was countersigned by G., who described himself as secretary of the company:—"London, December 31, 1856. Three months after date we jointly promise to pay S. or order 600*l*. for value received in stock on account of the London and Birmingham Hardware Company, Limited:" it was held, in the Exchequer Chamber (affirming the judgment of the Exchequer, 2 H. & N. 293; 3 Jur. N. S. 619) that the directors who signed it were not personally liable upon the note, *dubitantibus* Crompton, J. and Willes, J. *Lindus v. Melrose*, 3 H. & N. 177; 4 Jur. N. S. 488; 27 L. J., Exch. 326; Exch. Cham.

Cases as to bills, &c.

An action was brought on a bill drawn upon a company and accepted by the secretary, who was described "secretary to the said company," who had authority to accept bills for the company, which was duly registered under the 19 & 20 Vict. c. 47, with limited liability: it was held, that the acceptance of the company was a signing of the bill within sect. 31, and therefore, that the secretary was liable under that section by reason of the word "limited" having been omitted in the name of the company. *Penrose v. Martyn*, 5 Jur. N. S. 362; 28 L. J., Q. B. 28; El., Bl. & El. 499.

A bill of exchange drawn on behalf of a company, though in the form prescribed in the 7 & 8 Vict. c. 110, did not bind the company, and was not available in the hands even of

a *bonâ fide* holder, if the bill was drawn for any purpose not within the scope of the business of the company, and not such as the directors had power by the deed of settlement to bind the company by bills in respect of. *Balfour v. Ernest*, 5 C. B., N. S. 601; 5 Jur. N. S. 439; 28 L. J., C. P. 170; 7 W. R. 207. All persons dealing with such a company are taken to be affected with knowledge of its deed of settlement. *Ib.*

A bill drawn on a company (limited) by a shareholder in that company was accepted "W. E., secretary, by order of the Royal Surrey Gardens Company (Limited)." This acceptance was in fact written by the order of certain directors of the company. At the time when the bill became due the company was insolvent. In an action by a second indorsee of the bill (who did not show that either he or the first indorsee had given value to the drawer) against the directors who authorized the acceptance, alleging in one count that they accepted the bill, and in another charging them with falsely representing that they had authority on behalf of the company to accept it: it was held, first, that the directors were not liable as acceptors, and that assuming there had been a false representation, the plaintiff not having proved that he thereby sustained damage, the defendants were entitled to a verdict. *Eastwood v. Bain*, 3 H. & N. 738; 28 L. J., Exch. 74; 7 W. R. 90.

The allegation of the indorsement of a bill in an action by indorsee against the acceptor does not necessarily mean such an indorsement as will give a right of action against the indorsee, but only such an indorsement as gives the plaintiff a title to the bill. *Smith v. Johnson*, 3 H. & N. 222; 27 L. J., Exch. 363.

Where, therefore, the drawers of a bill of exchange indorsed it to a registered company, and the officer of the company delivered the bill to the plaintiff for value, bearing the indorsement of two directors of the company, "per procuration:" it was held, in an action by the plaintiff against the acceptor, that whether or not the indorsement was such as to give a right of action by the plaintiff against the company, there was such an indorsement as entitled the plaintiff to a verdict on a traverse of the allegation of the indorsement of the bill by the company to the plaintiff. *Ib.*

(b) Thus far this section corresponds with 19 & 20 Vict. c. 47, s. 43.

Prohibition
against car-
rying on
business
with less
than seven
members (c).

48. If any company under this act carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it

so carries on business after such period of six months, [and is cognizant of the fact that it is so carrying on business with fewer than seven members], shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

(c) This section is the same as the 39th section, 19 & 20 Vict. c. 47, with the exception of the words in brackets. By sect. 79, *post*, a company may be wound up whenever the members are reduced in number to less than seven.

Provisions for Protection of Members.

49. A general meeting of every company under this act shall be held once at the least in every year (*d*). General meeting of company.

(*d*) See 19 & 20 Vict. c. 47, ss. 32, 26, and *post*, s. 79, as to the effect of suspending business for a year.

50. Subject to the provisions of this act, and to the conditions contained in the memorandum of association, any company formed under this act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the table marked A. in the first schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution. Power to alter regulations by special resolution (*e*).

(*e*) See 19 & 20 Vict. c. 47, s. 33.

51. A resolution passed by a company under this act shall be deemed to be special whenever a resolution has been passed by a majority of not less Definition of special resolution (*a*).

than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy (*b*) (in cases where by the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed: at any meeting mentioned in this section, unless a poll (*c*) is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same: notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company: in computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

(*a*) This section differs from the 34th section, 19 & 20 Vict. c. 47.

(*b*) The form of an instrument appointing a proxy is prescribed in Table (A.) pl. 51, *post*.

Stamp duties
on instru-
ments of
proxies
herein
named re-
pealed, and
new duties
granted in
lieu thereof.

After 29 July, 1856, in lieu of the stamp duties then payable on the several instruments of proxy thereafter described, there shall be charged and paid the duties following, (that is to say), for and in respect of every letter or power of attorney and every commission, factory, mandate or other instrument in the nature thereof made for the sole purpose of appointing or nominating a proxy to vote at any meeting within any part of the United Kingdom of the proprietors or shareholders of or in any joint stock company or other company or society

whose stock or funds are divided into shares and transferable or made for the purpose of appointing, nominating or authorizing any person to vote as a proxy, commissioner, mandatory or otherwise, at any parish meeting of heritors or proprietors of real or heritable property in Scotland, the stamp duty of sixpence. 19 & 20 Vict. c. 81, s. 1. The 6th section of the act 7 Vict. c. 21, and other stamp acts, are applied to the duties granted by 19 & 20 Vict. c. 81, s. 2 of that act.

The commissioners of inland revenue are prohibited from stamping any instrument appointing a proxy, and a penalty of 50*l.* is imposed on any person making or signing such instrument, or on any person voting as a proxy under such instrument not duly stamped, and every vote or other act done under any such instrument not duly stamped is absolutely void. 7 & 8 Vict. c. 21, s. 7.

The 7 & 8 Vict. c. 21, refers only to powers of attorney whereby proxies are appointed to vote at one particular meeting of a joint stock company, or any adjournment thereof, and not to mere general powers of attorney which remain subject to the stamp duty of 30*s.* imposed by the 55 Geo. 3, c. 184. *Trinity House, Hull v. Beadle*, 13 Q. B. 175; 13 Jur. 557; 18 L. J., Q. B. 78.

In lieu of the stamp duty of 1*l.* 10*s.* payable in respect of any letter or power of attorney or commission, factory, mandate or other instrument in the nature thereof, made for the sole purpose of appointing, nominating or authorizing any person to vote as a proxy, commissioner, mandatory or otherwise at any one meeting of the proprietors, members or contributors to the funds of any institution established for the purposes of education or charity, or of other persons having the direction or control of the affairs of the institution, the time of holding whereof shall be specified in such instrument, or at any adjournment of such meeting, the stamp duty of sixpence. 24 & 25 Vict. c. 91, s. 26.

The stamp duty of sixpence granted by this act and any former act upon a letter or power of attorney, commission, factory, mandate or other instrument in the nature thereof, may be denoted by an adhesive stamp to be provided by the commissioners of inland revenue and affixed to the instrument and cancelled by the person signing the instrument by writing his name or the initials thereof upon or across the stamp, together with the date of the day of the meeting for voting at which the instrument is made; but nothing herein contained shall relieve any person from the penalty incurred by making or signing any such instrument on paper not duly stamped, or by voting or attempting to vote under the authority thereof, unless there shall be affixed thereto and cancelled as aforesaid the proper adhesive stamp. *Ib.* s. 27.

(c) See Table A. *post*, pl. 42, 43.

The right to demand a poll is a necessary incident or con- Poll.

Stamp duty
on certain
proxies
reduced.

Adhesive
stamps may
be used for
proxies.

sequence to the mode of election by show of hands wherever it is not excluded by special custom. *Campbell v. Maund*, 5 Ad. & Ell. 879, per Tindal, C. J. All persons qualified to vote, whether present or not at the show of hands, have a right to be admitted to the meeting during such poll, although the members present at the time of the poll being granted resolve that it shall be confined to those present. The exclusion of a person qualified to vote appears to be sufficient ground for impeaching an election. *Reg. v. Rector of Lambeth*, 8 Ad. & Ell. 356; see *Reg. v. D'Oyly*, 12 Ad. & Ell. 139; *Reg. v. St. Pancras*, 11 Ad. & Ell. 15.

The result of a poll when claimed is the legal termination of a meeting. The right to a poll is a common-law right, which is not taken away by mere general words of a statute. *White v. Steele*, 8 Jur. N. S. 1177.

In order to prove that land was sold by a railway company, it is not sufficient to prove by an auctioneer that he received directions for the sale from one of the directors, and that he received the conditions of sale from the solicitor of the company, by whom he had been employed in former sales by the company, who attended the sale. Some evidence ought to be given to show that the director or the solicitor was authorized by the company to offer the particular land for sale; *Moody v. London, Brighton and South Coast Railway Company*, 31 L. J., Q. B. 54.

Provision where no regulations as to meetings (a).

52. In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A. in the first schedule hereto, and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

(a) This is a new provision.

Registry of special resolutions.

53. A copy of any special resolution (a) that is passed by any company under this act shall be printed and forwarded to the registrar of joint stock companies, and be recorded by him: if such copy is not so

forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

(a) The 35th section, 19 & 20 Vict. c. 47, did not require the copy to be printed.

54. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution: where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct: and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Copies of special resolutions (b).

(b) See 19 & 20 Vict. c. 47, s. 36.

55. Any company under this act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company (d).

Execution of deeds abroad (c).

(c) This is nearly the same as the 42nd section, 19 & 20 Vict. c. 47.

(d) The stat. 19 & 20 Vict. c. 47, s. 41, contained provisions regulating the mode of making contracts on behalf of companies, which are not contained in this act. See also 8 & 9 Vict. c. 16, s. 97. Experience has proved the necessity of drawing up and executing agreements with public companies in a legal, solemn and binding form, and of not relying upon good faith and common honesty. *Leominster Canal Navigation Company v. Shrewsbury and Hereford Railway Company*, 3 Kay & J. 654.

Rule, that corporation cannot bind their property except under common seal.

The general rule is, that a corporation can neither take nor grant but by its proper name of incorporation, though every minute variation in the name will not avoid a grant. Kyd on Corp. 234, 237; *Mayor of Carlisle v. Blamire*, 8 East, 487, 492; Com. Dig. Capacity, B 5; *Croydon Hospital v. Farley*, 2 Marsh, 174; 6 Taunt. 467; *Shelford on Mortmain and Charities*, 516 n. (u), 676. In dealing with incorporated companies, it is important to bear in mind the general rule that a corporation can neither dispose of nor bind any corporate property, except by deed under their common seal. Bro. Corp. 34, 50, 51; 1 P. Wms. 656; 3 Atk. 475; Bac. Abr. Corporations (E); 3 Com. Dig. Franchise, F. 12, 13. An exception to this rule has arisen in modern times, since corporations have been established by acts of parliament for the purpose of carrying on trading speculations; and where the nature of their constitution has been such as to render the drawing of bills, or the constant making of any particular sort of contracts necessary for the purposes of the corporation, in such cases the courts have implied in those who are, according to the provisions of the act of parliament, carrying on the corporation concerns, an authority to do those acts without which the corporation could not subsist. See 6 Mee. & W. 821; 6 Ad. & E. 829, 846.

The general rule of law is, that a corporation contracts under its common seal: as a general rule, it is only in that way that a corporation can express its will or do any act. That general rule, however, has from the earliest traceable periods been subject to exceptions, the decisions as to which furnish the principle on which they have been established, and are instances illustrating its application, but are not to be taken as so prescribing in terms the exact limit that a mere circumstantial difference is to exclude from the exception. This principle appears to be a convenience, amounting almost to necessity. Wherever to hold the rule applicable would occasion very great inconvenience, or tend to defeat the very object for which the corporation was created, the exception has prevailed; hence the retainer by parol of an inferior servant, the doing of acts very frequently recurring, or too insignificant to be worth the trouble of affixing the common seal, are established exceptions; on the same principle stands the power of accepting bills of exchange and issuing

promissory notes, by companies incorporated for the purposes of trade, with the rights and liabilities consequent thereon. *Church v. The Imperial Gas Light and Coke Co.*, 6 Ad. & E. 681; 3 Nev. & P. 35. To every word of the above the Court of Exchequer entirely subscribed, in the case of the *Mayor of Ludlow v. Charlton*, 6 Mee. & W. 822.

In the last case it was observed by Rolfe, B., that if the legislature in creating a body corporate invest any member of it, either expressly or impliedly, with authority to bind the whole body by his mere signature or otherwise, then undoubtedly the adding a seal would be matter purely of form, and not of substance. In other cases the seal is the only authentic evidence of what the corporation has done or agreed to do. The resolution of a meeting, however numerous attended, is, after all, not the act of the whole body. *Mayor of Ludlow v. Charlton*, 6 Mees. & W. 823.

If work be done for a corporation for purposes connected with the corporation, under a verbal order, and accepted and adopted by them, they cannot in an action to recover the price object that no order was given under seal. *Sanders v. St. Neots Union*, 8 Q. B. 816; *Haigh v. Bierley Union Guardians*, El., Bl. & El. 873; 5 Jur. N. S. 511; 28 L. J., Q. B. 62.

It was decided that neither the engine driver, the railway guard at the station of a railway, incorporated by act of parliament, where an accident through negligence had occurred to a passenger, nor the superintendent of the traffic department, had implied authority to make contracts obligatory on the company with medical men called in to assist the injured person. *Cox v. Midland Counties Railway Company*, 3 Exch. 268; 13 Jur. 65; 18 L. J., Exch. 65; 5 Rail. C. 583.

But such an authority might be inferred from the conduct of the directors of the company on former occasions in recognizing similar contracts made by their officers; or, perhaps, from evidence that such powers were usually exercised by similar agents of similar companies. *Ib.*

An objection to a bill by an incorporated railway company for specific performance of a contract for the purchase of land entered into by their agent, that it did not appear that the agent was authorized under the corporate seal, and therefore that there was no mutuality, was overruled, on the ground that the company had, before the bill was filed, not only acted on the contract by entering into possession of the land, but had actually made a railway over it. *London and Birmingham Railway Company v. Winter*, 1 Cr. & Ph. 57; see *Earl of Lindsay v. Great Northern Railway Company*, 10 Hare, 679; *Laird v. Birkenhead Railway Company*, 1 Johns. 500; *Leominster Canal Company v. Shrewsbury and Hereford Railway Company*, 3 K. & J. 654.

To enforce an executory contract against a corporation it may be necessary to show that it was by deed; but where they

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have acted as upon an executed contract, it is to be presumed against them, that every thing has been done that was necessary to make it a binding contract upon both parties, they having had all the advantage they would have had if the contract had been regularly made. This is by no means inconsistent with the rule, that, in general, a corporation can only contract by deed; it is merely raising a presumption against them from their acts, that they have contracted in such a manner as to be binding upon them, whether by deed or otherwise. Per Lord Denman, C. J., *Doe d. Pennington v. Jamieth*, 13 Jur. 123.

If a contract is executed on the part of a corporation, and the parties who contracted with the corporation have received the benefit of the consideration money from the corporation, in that case the other parties are bound by the contract, though not under the corporate seal, and are liable to be sued thereon by the corporation. *Fishmongers' Company v. Robinson*, 6 Scott, N. R. 56, see p. 105.

Though the affixing of the common seal to the deed of conveyance of a corporation be sufficient to pass the estate, without a formal delivery, if done with that intent, yet it has no such effect if the order for affixing the seal be accompanied with a direction to their clerk to retain the conveyance in his hands till accounts have been adjusted with the purchaser. *Derby Canal Company v. Wilmot*, 9 East, 360. See *Doe d. Bank of England v. Chambers*, 4 Ad. & E. 412; 6 Nev. & M. 539.

A corporation aggregate may sue and be sued in *indebitatus assumpsit*. *Beverley v. Lincoln Gas Light Company*, 6 Ad. & E. 829; *Arnold v. Mayor of Poole*, 4 M. & Gr. 896.

An action lies against an incorporated company for a thing done, within the purpose of a corporation, in such a manner as would constitute a wrong for which an action would lie if done by a private individual. *Green v. London General Omnibus Company*, 29 L. J., C. P. 13.

An action may be maintained by a company for a libel on one of its shareholders. *Metropolitan Saloon Omnibus Company, Limited v. Hawkins*, 28 L. J., Exch. 201.

An act of parliament incorporating a railway company gave power to the directors "to appoint and displace any of the officers of the company, and to enter into contracts and other matters necessary for the transaction of its affairs:" it was held, that the appointment of an attorney to the company need not be under their corporate seal. *Reg. v. Cumberland, Justices*, 12 Jur. 1025; L. J., 1848, Q. B. 102. A solicitor, who was employed to conduct a prosecution by a corporation, recovered his bill of costs from the corporation, although not retained under seal. *Haigh v. North Bierley Union, El., Bl. & El.* 873.

By a railway incorporation act the directors of the company were authorized to use the common seal, and all con-

tracts in writing relating to the affairs of the company which should be signed by any three of the directors were to bind the company. The company after having been established for some time resolved to change the system of locomotion, and by their secretary entered into an agreement, *not under seal*, with a contractor that he should execute works. He accordingly commenced the works, but before they were complete he was dismissed by the company. It was held, that he could not recover the value of the work done, because there was no contract under seal, nor signed by three directors, nor entered into under a resolution of the directors authorizing the work in question. *Diggle v. London and Blackwall Railway Company*, 5 Rail. Cas. 591; 5 Exch. 442; see *Homersham v. Wolverhampton Waterworks Company*, 6 Rail. C. 790, *post*, s. 97, n.

A contract to bind a corporation as to its revenues must be under its common seal, although individual members signing a contract will be personally liable; *Taylor v. Dullidge (Dulwich) Hospital*, 1 P. Wms. 655; see 3 Atk. 473; 3 B. & Ad. 125; 4 Bing. 483; 6 Ad. & E. 346, 829; 4 Ad. & E. 410.

It was questioned whether a corporation can borrow money except under the corporate seal. *Wilmot v. Corporation of Coventry*, 1 Y. & Coll. 518. Sir J. Leach, however, was of opinion that if a regular corporation resolution passed for granting an interest in a part of the incorporation property, and upon the faith of that resolution expenditure had been incurred, that both principle and authority would be found for compelling the corporation to make a legal grant in pursuance of that resolution. *Marshall v. Corporation of Queensborough*, 1 Sim. & St. 520; see 1 P. Wms. 656; 3 Atk. 476, 478.

It is settled that an agent is responsible, though known by the other party to be an agent, if by the terms of the contract he makes himself the contracting party. *Higgins v. Senior*, 4 M. & W. 834; *Lennard v. Robinson*, 5 El. & Bl. 125; *Parker v. Winlow*, 7 El. & Bl. 942; *Williamson v. Barton*, 7 H. & N. 899.

As to the power of a general agent to bind his principal as to third parties, notwithstanding the limited authority of the principal, see *Duke of Beaufort v. Neeld*, 12 Cl. & Fin. 248. Powers of agent.

Although an agent cannot delegate his authority to another person, it is clear that an agent must necessarily perform a number of his acts and functions through the aid of the persons by whom his authority is delegated. A proposal for a life policy was accepted on behalf of an insurance company by their agent in Australia, who acted in the transaction through the medium of a sub-agent, and the premium was paid. It was held binding on the company, although the agent had no authority to appoint a sub-agent, and although there were some informalities of form but not of substance.

Rossiter v. Trafalgar Life Assurance Association, 27 Beav. 377. See *Toule v. National Guardian Assurance Society and Albert, &c. Guarantee Company*, 5 L. T., N. S. 193, L. J. See *Pole v. Leask*, 28 Beav. 562; 6 Jur. N. S. 1104; 29 L. J., Ch. 888, where it was held (*inter alia*), that where an express authority is given an implied authority is combined with it to do all such acts as may be necessary for effecting the object for which the express authority is given. The powers of an agent are limited to the extent of the powers of the principal. Contracts which would not be binding on the principal as *ultra vires*, do not become binding by means of their having been entered into through the medium of an agent. *Montreal Association Company v. McGillivray*, 8 W. R. 165, Privy Council.

Powers to borrow money are frequently given to companies incorporated by act of parliament. See 8 & 9 Vict. c. 16, ss. 38—55; Shelford on Law of Railways, pp. 155—162, 3rd ed. As to loan notes, see *Ib.* pp. 51, 52; *Furness v. Caterham Railway Company*, 27 Beav. 358.

Where the articles of association are silent a joint stock company has an implied power to borrow money, and if their business render it necessary may bind themselves by bills or promissory notes. *Bank of Australasia v. Bank of Australia*, 12 Jur. 189; *West Cornwall Railway Company v. Mowatt*, 12 Jur. 407; *Re Norwich Yarn Company*, 22 Beav. 143; *Bryon v. Metropolitan Saloon Omnibus Company*, 4 Jur. N. S. 1224; *Morgan's Case*, 1 Hall & T. 320; 1 Mac. & G. 225; see *Burmester v. Norris*, 6 Exch. 796.

The Port of London Shipowners' Loan and Assurance Company was amalgamated with the Sea, Fire and Life Assurance Society by a deed which was subsequently judicially declared to be illegal and void. By the deed of settlement of the company the directors were authorized to draw and accept bills for the purposes of the company. B. had before the so-called amalgamation effected a policy with the Port of London Company, upon which he sustained a loss, in satisfaction of which the directors of the Sea, Fire, Life Society, after the amalgamation, gave him a bill drawn by them upon their cashier: it was held, that the latter company was not liable upon the bill, it not having been drawn for the legitimate purposes of the company, and B. being bound to take notice of the contents of the deed of settlement, and therefore cognizant of the want of authority in the directors to draw the bill. *Balfour v. Ernest*, 5 C. B., N. S. 601; 5 Jur. N. S. 439; 28 L. J., C. P. 170.

Directors of a registered company, at a meeting of the directors, ordered the secretary to accept a bill of exchange in favour of a shareholder to whom the company was indebted for work done. The secretary accepted the bill (which was drawn on the company) "by order of the directors on behalf of the company." The company's deed pro-

hibited the directors from accepting bills. The indorsees of the bill in one count alleged that the directors accepted the bill by the secretary, their agent, and in a second count alleged that they, assuming to be directors of the company, falsely pretended that they had authority to accept and to order the secretary to accept on behalf of the company, whereby the indorsees, relying upon the acceptance, believed that it was duly authorized by the company, and took the bill for value: it was held, that the directors were not liable on the first count, the acceptance not being by the secretary on their behalf; also that on pleas to the second count of not guilty and a traverse of the allegation, that the indorsees took the bill in reliance upon the acceptance as being authorized by the company, the directors were entitled to the verdict, there being no evidence that the indorsees gave value for the bill, or that they were otherwise injured. *Eastwood v. Bain*, 3 H. & N. 738; 28 L. J., Exch. 74.

Directors of a company were prohibited from giving bills of exchange, but they had powers to borrow on mortgage. They however gave bills to secure an existing debt, and a mortgage was at the same time executed under the seal of the company, which was made subject to redemption on payment of the bills: it was held, first, that the mortgage was given to secure the debt, and not the payment of the bills, and therefore was valid; and that upon a bill of foreclosure by the mortgagee the debt of the company must be treated as valid until set aside by an independent proceeding. *Scott v. Colburn*, 26 Beav. 276; 5 Jur. N. S. 183; 28 L. J., Chanc. 635.

A corporation was empowered by an act to purchase lands for enlarging the Borough Market, and it directed them within seven years after the passing of the act to sell so much of the lands as were not required, the proceeds to be applied for the purposes of the act. There was also power to borrow money on debentures, and one holder was to have no priority over another. Power was also given to borrow money on mortgage, or by sale of the corporate property. All the money received under the act, and the rents of the estates and the tolls of the market, after paying various charges, were to be applied in payment of the money borrowed. The corporation was also restrained by the act, without the consent of the lords of the treasury, from taking, appropriating, using, selling, demising, mortgaging or alienating for the purposes of the act any messuages which they could not have taken before the act passed. Upon a bill by a debenture holder, it was held, that a mortgage of lands made to a debenture holder as a further security for money advanced on debentures could not be supported; that such mortgage gave no priority or preference to the mortgagee; and that the lands comprised in the mortgage (being part of those pur-

chased under the act) must be sold, and the purchase-money applied in discharge of the debts as directed by the act. *De Winton v. Brecon (Mayor, &c. of)*, 5 Jur. N. S. 882; 28 L. J., Chanc. 600.

A power to borrow money for the purposes of a bank may be considered as a necessary incident to a banking company. *Bank of Australasia v. Breillat*, 6 Moore, P. C. 152; 12 Jur. 189; *Macclae v. Sutherland*, 3 El. & Bl. 1. And the exercise of such a power by directors will render the company liable to a *bonâ fide* lender, although there has not been a compliance with all the provisions of the company's deed by the directors. *Royal British Bank v. Turquand*, 5 El. & Bl. 248; 6 *Ib.* 327; *Agar v. Athenæum Life Assurance Society*, 3 C. B., N. S. 725. It can hardly be necessary to observe that such a power will not authorize the banking company to borrow money for converting a company into another of a different description.

It is competent to the majority of the shareholders of a limited company to borrow money on its credit, and an injunction was refused on the suit of the minority seeking to restrain such borrowing, on the ground that the capital of the company could not be increased by borrowing without the consent of the shareholders; but it was held to be inapplicable, the capital being one thing and the increase of cash in hand a different thing; *Bryon v. Metropolitan Saloon Omnibus Company (Limited)*, 4 Jur. N. S. 680, 1262.

A company registered under the 19 & 20 Vict. c. 47, was established for purchasing vessels and running them between certain places, or of letting out the same ships, and generally to transact the business of shipowners. By the 55th clause of the articles of the association the directors were authorized to exercise all powers which the company might exercise in general meeting, and which by the 19 & 20 Vict. c. 47, or by their articles of association were not to be exercised in public meeting. The articles contained no clause having reference to raising money: it was held, that under the 55th clause the directors had power to mortgage ships belonging to the company. It was considered to be clear that with regard to everything which is within the powers of a registered joint stock company, the majority of shareholders have power to deal with the assets of the company. *Australian Auxiliary Steam Clipper Company v. Mounsey*, 4 Jur. N. S. 1224; 27 L. J., Chan. 729.

By the company's deed of settlement, the liability of the shareholders, *inter se*, was limited to the amount of their shares in the capital of the company, with powers of increasing such capital, and of borrowing money on mortgage of the company's real estate. The capital having been expended, the directors applied money borrowed by them of a bank for carrying on the business of the company. It was decided that the directors could charge such money against the com-

pany, although each shareholder was thereby rendered liable to an extent exceeding the amount of his share. *Norwich Yarn Company, Ex parte, Bignold's Case*, 22 Beav. 143; see *German Mining Company's Case, Ex parte Chippendale*, 4 De G., M. & G. 19.

The shareholders of a company have been decided to be liable to reimburse the directors money which they had borrowed without authority, but which had been applied in constructing the works of the company. *Troup's Case*, 29 Beav. 353; *Hoare's Case*, 30 *Ib.* 225; *Pare v. Clegg*, 29 Beav. 589, the case of a friendly society, with power to borrow money.

Where debentures of a company had been given in exchange for Westminster Improvement Bonds, which were held to be invalid against a *bonâ fide* purchaser for value, an inquiry was directed as to what benefit the company had derived from the bonds. *Athenæum Life Assurance Society v. Pooley*, 3 De G. & J. 294. And where money debentures and shares had been given in exchange for Westminster Bonds, the holders of the debentures recovered from the company the difference between the money arising from the bonds, and of which the company received the benefit, and the amount of the money paid for the bonds beyond what had been realized by a sale of some of the shares. *Wood's Claim and Brown's Claim*, 9 W. R. 366; 10 W. R. 662.

Where, however, the money borrowed without authority is applied by the directors for purposes not in furtherance of the legitimate objects of the company, the directors cannot claim to be reimbursed by the shareholders. *Kent Benefit Building Society*, 1 Dr. & Sm. 417; see *Selwyn v. Harrison*, 2 Johns. & H. 334.

An agreement was made between P. and a company represented by one of their directors, whereby P. agreed to sell and the director to purchase certain bonds, in consideration of 4,000*l.*, and debenture notes of the company for 2,000*l.*, and also 3,500 shares in the company on which one pound should be considered to have been paid. The director then took the bonds at 5,700*l.*, their market value, and after paying the 4,000*l.* to P., paid over the remainder for the use of the company. P. sold his interest in the debenture notes to two persons, who, upon the winding-up of the company, brought in their claims: it was held that the whole transaction was invalid and must be set aside, it being neither a borrowing nor a purchasing under the powers given to the directors by their deed of settlement. *Re London and County Assurance Company, Ex parte Wood and Ex parte Brown*, 30 L. J., Chan. 373.

A power of borrowing money does not authorize the issue of debentures for any other purpose than to secure money lent. *West Cornwall Railway Company v. Mowatt*, 12 Jur. 407.

Debentures issued by directors under the seal of their company cannot be enforced by members of the company

who accepted them after having been present at the meeting where the issue of the irregular debentures was sanctioned, and *bonâ fide* transferees for value from such shareholders are in the same position. Strangers cannot enforce irregular debentures as valid, if they have accepted them with notice that the conditions on which they were issuable had not been fulfilled. If the monies advanced on such irregular securities have been applied by the directors for the benefit of the company with the acquiescence of the shareholders, both parties are precluded from disputing their liability to repay the advance. Payment at the rate of 6l. per cent. had been made pursuant to the above debentures, without objection on the part of the shareholders: it was decided that the debenture holders were entitled to subsequent interest at the same rate on their advances, notwithstanding that they were not entitled to recover on the debentures themselves. *Re Magdalena Steam Navigation Company*, 1 Johns. 690; 6 Jur. N. S. 975; 29 L. J., Ch. 667; 8 W. R. 329.

Although debentures, issued by a joint stock company to a director in payment for work contracted to be done by him for the company, are invalid in his hands under 7 & 8 Vict. c. 110, s. 29, their invalidity will not affect a *bonâ fide* assignee for valuable consideration without notice, if the company had encouraged him in the belief that they were valid. *Re South Essex Gas Light and Coke Company*, 31 L. J., Ch. 293.

A *bonâ fide* purchaser of debentures issued in fraud of the company without notice takes subject to all the equities attaching upon them, and may be restrained from suing on the debentures, although the transfers of them had been duly registered and interest had been paid on them to such purchaser, but such facts had not been communicated to the shareholders. *Athenæum Life Assurance Society v. Pooley*, 3 De G. & J. 294; 5 Jur. N. S. 129; 28 L. J., Ch. 119.

A bill to restrain a company from an illegal exercise of a power of borrowing is demurrable if the illegal acts sought to be restrained do not appear upon the face of the bill. *Nowell v. Andover Railway Company*, 3 Giff. 112.

Where debenture holders are, under an act of parliament, entitled to be paid *pari passu*, one debenture holder cannot obtain an advantage over the others by means of an additional mortgage. *De Winton v. Brecon, Mayor, &c.*, 26 Beav. 533; see *Levy v. Mattheson*, 2 Giff. 71; 6 Jur. N. S. 1010; 29 L. J., Ch. 385.

Interest payable half yearly on coupons to debentures accrues due *de die in diem*, and is therefore subject to apportionment. *Re Rogers*, 1 Drew. & S. 338; 30 L. J., Chan. 153; see 4 & 5 Will. 4, c. 22; Shelford's Real Property Statutes, pp. 509—522 (6th ed.)

Examination
of affairs of
company by

56. The board of trade may appoint one or more competent inspectors to examine into the affairs of

any company under this act, and to report thereon, inspectors (a). in such manner as the board may direct, upon the applications following, (that is to say,)

- (1.) In the case of a banking company that has a capital divided into shares, upon the application of members holding not less than one-third part of the whole shares of the company for the time being issued ;
- (2.) In the case of any other company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued ;
- (3.) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

(a) This differs from the 48th section, 19 & 20 Vict. c. 47.

57. The application shall be supported by such evidence as the board of trade may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same ; the board of trade may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors. Application for inspection to be supported by evidence (b).

(b) This is a new provision.

58. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power ; any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly ; if any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty Inspection of books (c).

Part III.—Management, &c. of Companies, &c.

not exceeding five pounds in respect of each offence (*d*).

(*c*) This is nearly the same as the 49th section, 19 & 20 Vict. c. 47.

(*d*) The mode of recovering penalties is prescribed by the 65th section, *post*, p. 70.

Result of
examination
how dealt
with (*e*).

59. Upon the conclusion of the examination the inspectors shall report their opinion to the board of trade; such report shall be written or printed, as the board of trade directs; a copy shall be forwarded by the board of trade to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them; all expenses of and incidental to any such examination as aforesaid shall be defrayed by the members (*f*) upon whose application the inspectors were appointed, unless the board of trade shall direct the same to be paid out of the assets of the company, which it is hereby authorized to do.

(*e*) The same as the 59th section, 19 & 20 Vict. c. 47.

(*f*) That is personally, and not out of the funds of the company.

Power of
company to
appoint in-
spectors (*a*).

60. Any company under this act may by special resolution (*b*) appoint inspectors for the purpose of examining into the affairs of the company: the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the board of trade, with this exception, that, instead of making their report to the board of trade, they shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspector had been appointed by the board of trade.

(*a*) The same as sect. 51, 19 & 20 Vict. c. 47.

(*b*) Sect. 51, *ante*, p. 53.

61. A copy of the report of any inspectors appointed under this act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Report of inspectors to be evidence (c).

(c) This differs from the 52nd section, 19 & 20 Vict. c. 47.

Notices.

62. Any summons, notice, order or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a pre-paid letter addressed to the company, at their registered office (e).

Service of notices on company (d).

(d) The 19 & 20 Vict. c. 47, s. 53, authorized the service by giving the summons, &c. "to any director, secretary or other principal officer of the company." By sect. 16 of the 15 & 16 Vict. c. 76, a writ of summons against a corporation may be served on certain officers therein mentioned, not including a director: it was held, that the 53rd section of the 19 & 20 Vict. c. 45, did not apply to a writ of summons, and that service of a writ of summons against an incorporated company registered under 19 & 20 Vict. c. 47, upon a director of such company, was bad service. *Towne v. London and Limerick Steam Ship Company*, 5 C. B., N. S. 730; 5 Jur. N. S. 846; 20 L. J., C. P. 217.

(e) A company, though not formally dissolved, had practically ceased to exist, and had no officer or officers. The company having been made defendants in a suit, the Court of Chancery ordered the service of the bill on the late chairman and the secretary to be good service on the company. *Gaskell v. Chambers*, 26 Beav. 252; 5 Jur. N. S. 52; 28 L. J., Ch. 385.

Where a company is proposed to be wound up, but has no place of business, the court, on an *ex parte* application, will direct service of the winding-up petition on the chairman and general manager. *Re National Credit and Exchange Company (Limited)*, *Re Companies Act*, 1862, 11 W. R. 161. See Gen. Order, No. 3, *post*.

63. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document

Rules as to notices by letter.

was properly directed, and that it was put as a pre-paid letter into the post office (*a*).

Delivery of letters.

(*a*) It is sufficient to show that a letter containing a notice was posted at such a time as that by the due and usual course of the post it would be delivered on the proper day; and a party sending a letter is not answerable for a blunder of the post-office. The post-office mark is not conclusive as to the time when a letter was posted. See *Stocken v. Collen*, 7 M. & W. 515; *Smith v. Mullett*, 2 Camp. 208; *Hilton v. Fairclough*, *Id.* 633; *Hawkins v. Rutt*, Peake, N. P. C. 186. It seems that the delivery of a letter to a bell-man is a delivery to the post-office. *Pache v. Alexander*, 3 M. & Sc. 789.

Authentication of notices of company (*b*).

64. Any summons, notice, order or proceeding requiring authentication by the company may be signed by any director, secretary or other authorized officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

(*b*) This section is the same as 19 & 20 Vict. c. 47, s. 55.

Legal Proceedings.

Recovery of penalties (*c*).

65. All offences under this act made punishable by any penalty may be prosecuted summarily before two or more justices, as to England, in manner directed by an act passed in the session holden in the eleventh and twelfth years of the reign of her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Session within England and Wales with respect to summary Convictions and Orders," or any act amending the same (*d*); and as to Scotland, before two or more justices or the sheriff of the county, in manner directed by the act passed in the session of parliament holden in the seventeenth and eighteenth years of the reign of her Majesty Queen Victoria, chapter one hundred and four, intituled "An Act to amend and consolidate the Acts relating to Merchant Shipping," or any act amending the same (*e*), as regards offences in Scotland against that act, not being

offences by that act described as felonies or misdemeanors ; and as to Ireland, in manner directed by the act passed in the session holden in the fourteenth and fifteenth years of the reign of her Majesty Queen Victoria, chapter ninety-three, intituled " An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions and the Duties of Justices of the Peace out of Quarter Sessions in Ireland," or any act amending the same (*f*).

(*c*) This section is the same as sect. 56 of 19 & 20 Vict. c. 47.

It is sufficient in an indictment for stealing property of a banking company to allege the stolen property to belong to one of the partners named and others, under 7 Geo. 4, c. 64, s. 14. *Reg. v. Owen Pritchard*, 1 L. & C. C. C. 34 ; 30 L. J., M. C. 169 ; 7 Jur. N. S. 557.

(*d*) See 14 & 15 Vict. c. 93 ; 20 & 21 Vict. c. 43.

(*e*) Sects. 530—543. See 18 & 19 Vict. c. 91, and " The Merchant Shipping Act Amendment Act, 1862," 25 & 26 Vict. c. 63.

(*f*) See 20 & 21 Vict. c. 43.

66. The justices or sheriff imposing any penalty under this act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered ; and, subject to such direction, all such penalties shall be paid into the receipt of her Majesty's exchequer, in such manner as the treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom.

Application of penalties (*a*).

(*a*) This section is the same as the 57th section, 19 & 20 Vict. c. 47.

67. Every company under this act shall cause minutes of all resolutions and proceeding of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose ; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which

Evidence of proceedings at meetings (*b*).

such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications (c).

Proceedings
at meetings.

(b) This is similar to the 40th section, 19 & 20 Vict. c. 47.

(c) It is stated that the above provisions cannot be altered by any regulations to be adopted by the company. The usual mode of transacting business at a board of directors is, to take rough minutes or notes of what is done, and to make a fair copy of them in the company's books, in readiness for the next meeting, when they are to be signed by the then chairman. See Wordsworth's Joint Stock Company Law, p. 26, n., 9th ed.

It has frequently been urged that a resolution made at a meeting, the minutes of which were entered and signed after the termination of the meeting, could not, by such minutes, be proved to have been made. But this objection has always been overruled, even where the minutes of each meeting ought in strictness to have been signed at that meeting. 1 Lindley on Partn. p. 472. Where a railway act required the proceedings of all meetings to be entered in some book, and signed by the chairman of such respective meetings, the signature at a subsequent meeting, at which the minutes of the former meeting were read over and confirmed, by a person who was chairman at both meetings, was admitted to be sufficient. *London and Brighton Railway Company v. Fairclough*, 3 Scott, N. R. 68; 2 Man. & G. 674; 2 Railw. C. 544; *West London Railway Company v. Beonant*, 3 Q. B. 873; *Miles v. Bough*, 3 Gale & D. 119; *Inglis v. Great Northern Railway Company*, 1 Macq. H. L. C. 112; 16 Jur. 895; *Southampton Dock Company v. Richards*, and *Same v. Arnott*, 1 Scott, N. R. 219; 1 Man. & G. 448; Shelford on Railways, pp. 190, 191, 3rd ed.

68. In the case of companies under this act, and engaged in working mines within and subject to the jurisdiction of the stannaries, the court of the vice-warden of the stannaries shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, which it now possesses by custom, usage or statute in the case of unincorporated companies, but only so far as such jurisdiction or powers are consistent with the provisions of this act and with the constitution of companies as prescribed or required by this act; and for the purpose of giving fuller effect to such jurisdiction in all actions, suits or legal proceedings instituted in the said court, in causes or matters whereof the court has cognizance, all process issuing out of the same, and all orders, rules, demands, notices, warrants and summonses required or authorized by the practice of the court to be served on any company, whether registered or not registered, or any member or contributory thereof, or any officer, agent, director, manager or servant thereof, may be served in any part of England without any special order of the vice-warden for that purpose, or by such special order may be served in any part of the united kingdom of Great Britain and Ireland, or in the adjacent islands, parcel of the dominions of the crown, on such terms and conditions as the court shall think fit; and all decrees, orders and judgments of the said court made or pronounced in such causes or matters may be enforced in the same manner in which decrees, orders and judgments of the court may now by law be enforced, whether within or beyond the local limits of the stannaries; and the seal of the said court, and the signature of the registrar thereof, shall be judicially noticed by all other courts and judges in England, and shall require no other proof than the production hereof; the registrar of the said court, or the assistant registrar, in making sales under any decree or order of the court shall be entitled to the same privilege of selling by auction or competition with-

Jurisdiction
of vice-war-
den of stan-
naries (a).

out a licence, and without being liable to duty, as a judge of the Court of Chancery is entitled to im-
pursuance of the acts in that behalf.

(a) See *ante*, p. 3, n. (e), and *post*, sects. 81, 83, 108, 116, 120, 124, 125, 172.

Provision
as to costs
in actions
brought by
certain li-
mited com-
panies (b).

69. Where a limited company is plaintiff or pur-
suer in any action, suit or other legal proceeding,
any judge having jurisdiction in the matter may, if
it appears by any credible testimony that there is
reason to believe that if the defendant be successful
in his defence the assets of the company will be
insufficient to pay his costs, require sufficient security
to be given for such costs, and may stay all pro-
ceedings until such security is given.

(b) See 20 & 21 Vict. c. 14, s. 24. Under that section the
court would not require from a limited company security for
costs at the instance of the defendant, who alleged that the
company was insolvent, since the insolvency or solvency of
the company can only be ascertained on the accounts being
taken. *Caillaud's Patent Tanning Company v. Caillaud*, 5 Jur.
N. S. 259; 28 L. J., Ch. 357.

Declaration
in action
against
members.

70. In any action or suit brought by the com-
pany against any member to recover any call or
other monies due from such member in his character
of member, it shall not be necessary to set forth the
special matter, but it shall be sufficient to allege
that the defendant is a member of the company
and is indebted to the company in respect of a call
made or other monies due whereby an action or
suit hath accrued to the company (c).

(c) See *ante*, sect. 16, p. 22; see *Wills v. Sutherland*, 4
Exch. 211; 5 Exch. 715; *Wolverhampton Waterworks Com-
pany v. Hawksford*, 6 C. B., N. S. 336; *Welland Railway
Company v. Blake*, 6 H. & N. 410; 8 & 9 Vict. c. 16, s. 26
Shelford on Railways, pp. 130—138.

To an action for calls by liquidators of a joint stock com-
pany, with limited liability, which was under the process of
a voluntary winding-up, a shareholder was allowed to plead
a set-off. *Garnet and Moseley Gold Mining Company (Limited
v. Sutton*, 7 L. J., N. S. 506; see 12 & 13 Vict. c. 108, ss. 61
104, art. 619; 21 & 22 Vict. c. 60, s. 17.

Alteration of Forms.

71. The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer; the board of trade may from time to time make such alterations in the tables and forms contained in the first schedule hereto, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as it deems requisite; any such table or form, when altered, shall be published in the London Gazette, and upon such publication being made such table or form shall have the same force as if it were included in the schedule to this act, but no alteration made by the board of trade in the table marked A. contained in the first schedule shall affect any company registered prior to the date of such alteration or repeal, as respects such company, any portion of such table.

Board of trade may alter forms in schedule (d).

(d) See 19 & 20 Vict. c. 47, s. 58; 20 & 21 Vict. c. 14, s. 22.

72. Any company under this act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with "The Railway Companies Arbitration Act, 1859" (a), any existing or future difference, question or other matter whatsoever in dispute between itself and any other company or person, and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

Power for companies to refer matters to arbitration.

(a) See this act, *post*.

73. All the provisions of "The Railway Companies Arbitration Act, 1859," shall be deemed to

Provisions of 22 & 23 Vict. c. 59, to apply.

apply to arbitrations between companies and persons in pursuance of this act; and in the construction of such provisions “the companies” shall be deemed to include companies authorized by this act to refer disputes to arbitration (*b*).

(*b*) By sect. 162, disputes as to the price of the interest of a dissentient member are to be settled by arbitration, in the mode prescribed by 8 & 9 Vict. c. 16, ss. 128—134; see *post*, note to sect. 162, where these sections are inserted.

PART IV.

WINDING UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT (*a*).

Preliminary.

Meaning of
contributory
(*b*).

74. The term “contributory” shall mean every person liable to contribute to the assets of a company under this act, in the event of the same being wound up: it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory (*c*).

(*a*) See the General Orders as to the mode of proceeding, *post*. As to companies registered under the Acts 1856, 1858, see *post*, ss. 176, 177; as to companies registered under this act, but not formed under it or under the acts 1856, 1858, *post*, ss. 196—198; and as to unregistered companies, *post*, ss. 199—204.

Origin and
progress of
winding-up
acts.

The first act which provided for the dissolution and winding up of companies was, the 7 & 8 Vict. c. 111 (now repealed), which declared what constituted acts of bankruptcy in the case of joint stock companies, and the mode in which the affairs of such bankrupt companies should be wound up for the benefit of their creditors. In 1848 and 1849, the statutes 11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108, were passed, for enabling joint stock companies generally to be dissolved and wound up, without the necessity of a suit in chancery, to which all the shareholders must have been parties.

In 1856, the act 19 & 20 Vict. c. 47, was passed, and by the

107th section of that act the acts 7 & 8 Vict. c. 110 ; 10 & 11 Vict. c. 78, and 18 & 19 Vict. c. 133, were repealed, but such repeal did not take effect with respect to any company completely registered under 7 & 8 Vict. c. 110, until such company had obtained registration under the 19 & 20 Vict. c. 47. By 20 & 21 Vict. c. 14, s. 23, the 107th section of the act 19 & 20 Vict. c. 47, was repealed, and in lieu thereof it was enacted, that the 7 & 8 Vict. c. 110, and the 10 & 11 Vict. c. 78, and the Limited Liability Act, 1855, should be deemed to have been and to remain unrepealed, as to any company which had not obtained registration under 19 & 20 Vict. c. 47, until such company obtained registration under the acts 1856, 1857, but after such time, and not before, should be repealed as to such last-mentioned company, and subject as aforesaid the 7 & 8 Vict. c. 110, 10 & 11 Vict. c. 78, and the Limited Liability Act, 1855, were repealed. By the 108th section of 19 & 20 Vict. c. 47, it was enacted, that the 11 & 12 Vict. c. 45 ; 12 & 13 Vict. c. 108 ; 7 & 8 Vict. c. 111, and 8 & 9 Vict. c. 98 (the last relating to winding up companies in Ireland), should not apply to companies registered under the 19 & 20 Vict. c. 47, nor to companies registered under 7 & 8 Vict. c. 110, after the date at which they should have obtained registration under the 19 & 20 Vict. c. 47.

By the 109th section of the 19 & 20 Vict. c. 47, it was declared, that no repeal thereby enacted should affect any acts thereby repealed before such repeal came into operation. 2. Any right acquired or liability incurred under any such acts before such repeal came into operation. 3. Any penalty, forfeiture or other punishment incurred or to be incurred in respect of any offence against any such acts committed before such repeal came into operation. 4. Any proceedings to be taken in the prosecution of any order for winding up a company made before such repeal came into operation.

It is to be observed, that the acts 1856, 1857, 19 & 20 Vict. c. 47, 20 & 21 Vict. c. 14, besides repealing most of the previous acts on this subject, consolidated many of the previous provisions, and introduced extensive alterations entirely new.

By 20 & 21 Vict. c. 86, it was declared, that the Joint Stock Companies Acts 1856, 1857, should not be deemed to have repealed the 7 & 8 Vict. c. 110, or any other act respecting companies then formed or thereafter to be formed for carrying on the business of insurance. Hence it followed, that insurance companies established under the last-mentioned act remained subject to the Winding-up Acts, 1848, 1849.

Every insurance company completely registered under the act 7 & 8 Vict. c. 110, was, by the Companies Act, 1862, required to register on or before the 2nd Nov. 1862. See *post*, s. 209.

After the 2nd Nov., 1862, the last-mentioned acts (*inter alia*) are repealed. 25 & 26 Vict. c. 89, s. 205. But no repeal

thereby enacted shall affect,—1. Anything done under any acts thereby repealed. 2. The incorporation of any company registered under any act thereby repealed. 3. Any right or privilege acquired or liability incurred under any act thereby repealed. 4. Any penalty, forfeiture or other punishment incurred in respect of any offence against any act thereby repealed. *Ib.* s. 206. Where, previously to 2nd November, 1862, an order has been made for winding up a company under any acts thereby repealed, or a resolution has been passed for winding up a company voluntarily, such company shall be wound up, in the same manner and with the same incidents as if the Companies Act, 1862, had not passed; and for the purposes of such winding up, such repealed acts shall be deemed to remain in force. 25 & 26 Vict. c. 89, s. 207.

It appears, therefore, that the Companies Act, 1862, has not altogether superseded the Joint Stock Companies Acts, 1856, 1857, and that the necessity of referring to those acts, and the decisions thereon, will still remain of frequent recurrence.

Any partnership, association or company (except railway companies incorporated by act of parliament) consisting of more than seven members, and not registered under the Companies Act, 1862, may be wound up under that act, with certain exceptions and additions. See Part 8 of this act, *post*, ss. 199—204.

Object of the winding-up acts.

Before the passing of the winding-up acts before-mentioned, courts of equity had no effectual powers to deal with the complicated transactions arising out of the failure of joint stock companies on a large scale. Although the rights of creditors might be enforced at law against the capital of the company and the private property of individual shareholders, there existed no tribunal either at law or in equity which could enforce justice or equality between the members *inter se*, or which had power to superintend the application of the assets of the company in the discharge of its debts and liabilities.

The intention of the acts for winding up the affairs of joint stock companies was, to put an end to the difficulties which rendered the settlement of the affairs of an unsuccessful company by a suit in chancery nearly impracticable. This was done by abolishing the machinery of bill and answer, with the attendant difficulties with respect to parties, and by substituting a petition as the initiative process. By virtue of those acts every person interested in the company was to be primarily represented by the official manager, and all parties not represented by him, and such parties as were not represented by him, might be brought before the court, by serving a petition on the ideal representative of the company, in the manner prescribed by the acts. The acts, on the order for winding up being made, transferred on petition the whole stock and effects of the company to the official manager, and thus sent the estate into the office of a master in chancery until its abolition, and sub-

sequently to the judges' chambers, to be there administered in a way analogous to the mode of administering the estates of deceased persons by their personal representatives. Although the contrivance was simple in principle, and apparently calculated to work well in practice, numerous new and serious evils arose out of the new jurisdiction, which is sufficiently apparent from the extent of litigation upon this subject, and which rendered the further interference of the legislature expedient.

The object of the winding-up acts was in no respect to alter the legal rights or liabilities of any one, but to facilitate the process of liquidation, and not to add to or detract from any existing rights. *Re Great North of England Railway Company, Ex parte Carrech*, 20 L. J., Ch. 670.

The object of the winding-up acts was to enable the managers of joint-stock companies to wind up the affairs of the company and to compel the shareholders to contribute, but they were not intended in any way to affect the rights of the creditors of such companies. *Beardshaw v. Lord Londesborough*, 21 L. J., C. P. 17.

The inherent jurisdiction of the Court of Chancery is not taken away by acts giving further remedies without express words for that purpose.

The legislature in providing a remedy under the winding-up acts has not excluded the remedy by bill for an account of money received by individuals in respect of shares (after allowing all costs, charges and expenses), and for the distribution of the surplus funds of the company amongst all the shareholders rateably, according to the number of their shares. *Clements v. Bowes*, 21 L. J., Ch. 306, pp. 309, 310.

The purpose of the winding-up acts was not to make it a matter of course that contributories showing a case to be within the classes of cases enumerated in the 5th section of the act 11 & 12 Vict. c. 45 (see sect. 79 of this act, *post*), may ask as of right for a winding-up order, without showing that some benefit will accrue to the company from it. A judge's discretion is to be exercised on the question, whether under the peculiar circumstances of the case it is necessary or expedient to make a winding-up order. Where a company was insolvent but an arrangement was pending, by which the admitted debts could be cleared by a subscription among the shareholders, and there were no other questions except equities between the shareholders, the court refused a winding-up order on the petition of a few shareholders holding very few shares, but left the parties to seek justice in the ordinary course of the court. *Ex parte Wise*, 1 Drew. 465.

A bill was filed to wind up the affairs of a banking company, on the ground of the personal misconduct of the directors. The defendants then obtained a winding-up order, although such order was opposed by the plaintiffs in the suit.

The plaintiffs then moved to stay the proceedings in the suit until the company should have been wound up under the order for that purpose. The court refused the motion, because the bill sought relief which could not be obtained under the winding-up order and on account of the delay which had occurred in applying to stay the proceedings in the suit. *Deeks v. Stanhope*, 20 L. J., Ch. 485; see *Parbury v. Chadwick*, *Jones v. Lord Charlemont*, 16 Sim. 271.

If the tests which are directed by the acts to be applied to try the solvency of a company, strictly and literally apply to a particular company, but the presumption arising therefrom is rebutted by the evidence offered in opposition to the petition, so that there is no reason to believe that the company is insolvent, the court will refuse to interfere. A dispute having arisen between a mining company and one of the shareholders respecting his liability to pay calls, the company procured one of their creditors to bring an action against him. He served notice of the action on the company, but they took no steps to stay the action or to indemnify the shareholders. There were no circumstances to satisfy the court that the company was not in a solvent condition: it was held, that, although the case came within the letter of the 5th article of the 5th section of the act 11 & 12 Vict. c. 45, yet as the action arose out of the dispute between the shareholder and the company and not from their inability to pay, he was not entitled, under the circumstances, to an order for winding up the concern. *Re the Wheal Lovell Mining Company, Ex parte Wyld*, 1 H. & Tw. 125; 1 Mac. & G. 1.

A company, established in 1853, had carried on its business at a loss in every year, amounting in the whole to 6,507*l*. There were irregularities in the management; the directors had not paid for shares subscribed for by them, interest had been paid out of capital, and the balance at the bankers had been reduced to 300*l*. On the other hand, the calls on the shares had hitherto been one-fifth only: it was held, that there was no case for winding it up. *Re National Live Stock Company*, 26 Beav. 153.

One object of the Winding-up Act, 1848, and of the former act, 7 & 8 Vict. c. 111, was to afford some test by which it should be ascertained whether the company did or did not fall within the description of a company unable to meet their pecuniary engagements, in short a sort of act of bankruptcy of the company. The former act, 7 & 8 Vict. c. 111, dealt with it as an act of bankruptcy, called it an act of bankruptcy and provided certain tests. The same identical tests that are applied to traders as evidence of their insolvency are applied as tests to the companies: and in the event of the test being applied and the company not being able to remove that test, the act considers that as an act of bankruptcy in effect, and therefore subjects the company to the operation of the pro-

visions for winding up the concern. But all those tests are simply for the purpose of coming to a safer conclusion as to whether they do or do not fall within the description of companies whose affairs require winding-up, and as to which, therefore, the policy of the act was intended to apply. Now among others, the test is proposed, of a creditor of the company having a judgment against the company demanding payment against the company and the company not paying it after a certain length of time (11 & 12 Vict. c. 45, s. 3), giving the company the opportunity of paying the judgment debt if they please, but if they do not pay that debt so ascertained to be a lawful debt by the judgment, it is assumed they cannot. That is assumed as a very fair test under the circumstances to which the act was intended to apply. But following that, another provision is necessarily and properly introduced. If a creditor thinks proper to sue an individual shareholder and recover a judgment, or shall be in the course of recovering his judgment against that individual shareholder, the shareholder being so called upon to pay, or liable to pay more than he ought to pay, is then authorized to apply to the company to relieve him from this liability; and if the company do not within a certain time relieve him from the liability, that is also considered as a test of the condition of the company and of its being in a condition to require the winding up of their affairs (11 & 12 Vict. c. 45 s. 5), namely, that they are not in a position to meet their pecuniary engagements.

If however these circumstances occur where the tests do not at all prove the point under investigation, if these facts occur, but afford no proof of the insolvency of the company or their being unable to meet their pecuniary engagements, why the act loses the test which was intended to be applied; and then the question is, whether the court exercising a discretion, for so ample a discretion is given to the court when all these facts occur, would be right in exercising its discretion and putting the act in operation upon such a test, the circumstances not coming up to that which is required to be proved before the company ought to be subjected to the operation of the act. *Re Wheal Lovell Mining Company, Ex parte Wylde*, 1 H. & Tw. 136, 137; 1 Mac. & G. 22; see sect. 79, *post*, n.

Shareholders in a company who have either sold or forfeited their shares may apply for a winding-up order against the company when it has ceased to carry on business, and is winding up its affairs privately, if they claim to be contributories and have been sued and made liable as such. *Re the Times Fire Assurance Company*, 31 L. J., Ch. 478.

(b) See 19 & 20 Vict. c. 47, s. 65; 20 & 21 Vict. c. 78, s. 15.

(c) The word "contributory" was a new term in legal phraseology, and adopted in the first instance in the joint stock

Definition of contributory.

winding-up acts. The attempt to give that word a precise and definite meaning has been hitherto unsuccessful, as will appear by the numerous decisions which have occurred upon the question as to who is or who is not to be deemed a contributory.

The definition of contributory in the winding-up acts, 1848, 1849, 11 & 12 Vict. c. 45, s. 3, and 12 & 13 Vict. c. 108, s. 9, was: I. Every member of a company; II. Every other person liable to contribute to the payment of any of the debts, losses or liabilities thereof. 1. As heir, devisee, executor or administrator of a deceased member. 2. As a former member. 3. As heir, &c. of a former member deceased. 4. Otherwise howsoever. By 20 & 21 Vict. c. 78, s. 15, it was declared, that the words, shareholder, member, contributory and alleged contributory, should be nominally taken to include all contributories or alleged contributories within the meaning of the Joint Stock Companies Winding-up Acts, 1848, 1849, and also all persons who might apprehend or desire to be discharged from responsibility in respect of the debts, liabilities and obligations of the company. As to contributories under Joint Stock Companies Acts, 1848, 1849, 1856, 1857, see sect. 99, *post*, n.

The provisions of 19 & 20 Vict. c. 47, relating to the winding-up of companies, shall apply to all companies registered under that act, and to all companies registered under the act 7 & 8 Vict. c. 110, from and after the date at which they have obtained registration under the act 19 & 20 Vict. c. 47, in manner thereafter mentioned, but not any other companies.

Liability of present shareholders in respect of debts.

In the event of any company being wound up by the court or voluntarily, the existing shareholders shall be liable to contribute to the assets of the company to an amount sufficient to pay the debts of the company, and the costs, charges and expenses of winding-up the same, with this qualification, that if the company is limited no contribution shall be required from any shareholder exceeding the amount, if any, unpaid on the shares held by him. 19 & 20 Vict. c. 47, s. 61.

Liability of former shareholders in a company other than a limited company with respect to debts.

In the event of any company other than a limited company being wound up by the court or voluntarily, any person who has ceased to be a shareholder within the period of three years prior to the commencement of the winding-up shall be deemed, for the purposes of contribution towards payment of the debts of the company, and the costs, charges and expenses of winding-up the same, to be an existing shareholder, and shall have in all respects the same rights, and be subject to the same liabilities to creditors, as if had not so ceased to be a shareholder, with this exception, that he shall not be liable in respect of any debt of the company contracted after the time at which he ceased to be a shareholder. *Ib.* s. 62.

Liability of former shareholders in a

In the event of any limited company being wound up by the court or voluntarily, any person who has ceased to be a holder of any share or shares within the period of one year

prior to the commencement of the winding-up shall be deemed, for the purposes of contribution towards payment of the debts of the company, and the costs, charges and expenses of winding-up the same, to be an existing holder of such share or shares, and shall have in all respects the same rights, and be subject to the same liabilities to creditors, as if he had not so ceased to be a shareholder. *Ib.* s. 63.

limited company with respect to debts.

The winding-up shall, if the company is wound up by the court, be deemed to commence at the time of the presentation of such petition as thereafter required to be presented to the court, and if the company is wound up voluntarily, be deemed to commence at the time of the passing the resolution authorizing such winding-up. *Ib.* s. 64.

Commencement of winding-up of company defined.

Any existing or former shareholder upon whom calls are authorized to be made by the third part of that act is thereafter called a "contributory," and the representatives of any deceased contributory shall be liable in a due course of administration to the same extent as such contributory would be liable under the third part of that act, if alive. *Ib.* s. 65.

Definition of "contributory," and legal character of his liability.

As to the person to be deemed a contributory in the event of an unregistered company being wound up, see *post*, sect. 200.

75. The liability of any person to contribute to the assets of a company under this act in the event of the same being wound up, shall be deemed to create a debt (in England and Ireland of the nature of a specialty (*b*)) accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability (*c*); and it shall be lawful in the case of the bankruptcy (*d*) of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

Nature of liability of contributory (*a*).

(*a*) See 20 & 21 Vict. c. 14, s. 13.

(*b*) It was decided that a call, under the winding-up acts, 11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108, was not a specialty debt, although the shareholder had executed the deed of settlement. *Re Royal Bank of Australia*, 3 Sm. & G. 272; 2 Jur. N. S. 11; *Ex parte Robinson's Executors*, 6 De G., M. & G. 572; 3 Jur. N. S. 1173; 26 L. J., Ch. 95. But by stat. 20 & 21 Vict. c. 14, s. 13, all calls which were authorized by part 3 of the act 19 & 20 Vict. c. 47, to be made on a contributory in the event of the company being wound up by the court or voluntarily shall be deemed, in England and Ire-

Calls under acts specialty debts.

land, to be specialty debts due from such contributory to the company.

A creditor whose debt is secured by an instrument under hand and seal, as by a bond or other deed, or by an instrument under hand and seal only, and which is not a deed, because it is not delivered as a deed, Co. Litt. 35 b; *Browne v. Vawser*, 4 East, 584; Shep. Touch. 57, 60; *Cecil v. Butcher*, 2 Jac. & W. 571, is a creditor by special contract, and the money so secured is therefore a specialty debt. 2 Bl. Com. 465; *Plumer v. Marchart*, 3 Burr. 1380; *Gifford v. Manley*, Cas. T. Talb. 109.

Specialty debts are to be paid by an executor or administrator out of legal personal assets before simple contract debts. *Pinchon's Case*, 9 Co. 88 b; 7 B. & C. 452; 3 Salk. 83. See Wms. Exors. pt. 3, bk. 2, s. 3.

A call made in pursuance of an act, charter or deed of settlement, before payment of the simple contract debts of a testator, will have priority over them; but an executor or administrator who pays simple contract debts before a call has been made will not be liable for a *devastavit*, as the contingent liability to pay calls which have not been made is not sufficient to render the payment of simple contract debts actually due improper. *Henderson v. Gilchrist*, 17 Jur. 570. Where a testator held shares in a company, the calls on which shares constituted a specialty debt, it was decided, that as against simple contract creditors, no part of the estate could be reserved to provide for future calls. *Wentworth v. Chevell*, 3 Jur. N. S. 805; 26 L. J., Ch. 760. See 22 & 23 Vict. c. 35, ss. 27, 29; and *Moffett v. Bates*, 26 L. J., Ch. 465, as to the fund out of which calls were to be paid. The executors of a deceased shareholder are liable to be made contributories in respect of shares until they have been transferred. *Blakesley's Case*, 13 Beav. 133; 3 Mac. & G. 726; *Keene's Executors*, 3 De G., M. & G. 272. An executor who becomes a shareholder incurs a personal liability not limited by the circumstance that as between himself and the persons beneficially interested the executor is not the owner of the shares standing in his name. *Spence's Case*, 17 Beav. 203; *Fenwick's Case*, 1 De G. & S. 557; *Armstrong v. Burnett*, 20 Beav. 424.

The time within which actions of debt upon specialties may be maintained is prescribed by stat. 3 & 4 Will. 4, c. 42, ss. 3—7; in Ireland, 16 & 17 Vict. c. 113, ss. 20, 21, 23. See Shelford's Real Property Statutes, pp. 269—275 (6th ed.) The limitation of time is twenty years in an action by a railway company against one of its members for calls under the Companies Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 16, and the special act, the claim being founded upon a statutory liability. *Cork and Bandon Railway Company v. Goode*, 13 C. B. 827; *Sheppard v. Hills*, 11 Exch. 55.

An order to wind-up a joint stock company under the acts

1848, 1849, did not suspend the operation of the Statute of Limitations; see *Re Gloucester, &c. and Central Wales Railway Company*, 2 Giff. 47; for no trust is contemplated by those acts as in bankruptcy; *Re Royal British Bank of Australia, Ex parte Forest*, 2 Giff. 42; 29 L. J., Ch. 383; *Ex parte Ross and Hooper*, 2 Gl. & J. 46; where the assets are vested in assignees upon trust for an unascertained body of creditors.

(c) As to making calls, see sects. 102, 121, 133, *post*. As to the liability of members, see sect. 38, *ante*, p. 45.

(d) See sect. 77, *post*.

76. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned (*f*), his personal representatives, heirs and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such personal representatives, heirs and devisees shall be deemed to be contributories accordingly.

Contributories in case of death (*e*).

(e) See 19 & 20 Vict. c. 47, s. 68.

(f) Sect. 98, *post*.

77. If any contributory becomes bankrupt (*h*), either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such bankrupt for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up; and for the purposes of this section any person who may have taken the benefit of any act for the relief of insolvent debtors before the eleventh day of October, one thousand eight hundred and sixty-one, shall be deemed to have become bankrupt (*i*).

Contributories in case of bankruptcy (*g*).

(g) 12 & 13 Vict. c. 108, s. 14. Under that section it was decided that the names of the bankrupt's assignees, describing them in that capacity, were properly placed on the list of contributories. *Ex parte Cooper, re Kollman's Locomotive Company*, 2 De G. & S. 113.

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(h) See sect. 75, *post*.

(i) This section refers to 1 & 2 Vict. c. 110, ss. 23 to 121, 5 & 6 Vict. c. 116, 7 & 8 Vict. c. 96, which are repealed by 24 & 25 Vict. c. 134, s. 230. See Shelford's Statutes for the Relief of Insolvent Debtors.

Member of
company not
a trader.

A member of or subscriber to any incorporated, commercial or trading company established by charter or act of parliament shall not be deemed as such a trader liable to become bankrupt. 12 & 13 Vict. c. 106, s. 65.

The stat. 6 Geo. 4, c. 16, s. 2, contained a similar provision, although it had been previously held, that holders of stock in public companies were not liable to the bankrupt laws in that character merely. *Ex parte Ball*, 15 Ves. 357.

The taking shares by a party in a joint stock bank for the express purpose of making himself a trader, and obtaining the benefit of the bankrupt law, and with no *bonâ fide* intention to follow the business of a banker for profit, is not a sufficient trading. *Ex parte Brundrett*, 2 Dea. 219; 3 Mont. & A. 50. The holding shares in a joint stock company for a period of six days only, where no dividends or profits appear to have been received by the party during the time that he possessed the shares, was held not to constitute a trading within the bankrupt law. *Ex parte Atkinson*, 1 Mont. D. & D. 300. But the holding of shares in a joint stock banking company for a period of two years, and the receiving successively two years' dividends on the shares, was held a sufficient trading by the holder as a banker. *Ex parte Wyndham*, 1 Mont. D. & D. 146; see *Smith v. Cannan*, 2 Ell. & Bl. 35. It appears that a member of a gas company may be a trader. *Ex parte Browne, re Puttock*, 2 Mont. D. & D. 758.

As to the bankruptcy of joint stock companies in Ireland, see 20 & 21 Vict. c. 60, ss. 168—177; and as to Scotland, see Kinnear's Law of Bankruptcy, pp. 13, 14.

Where bankrupt
beneficially entitled
to stock,
court may
make order
for transfer.

If any bankrupt shall have any government stock, funds or annuities, or any of the stock of any public company, either in England, Scotland or Ireland, standing in his name in his own right, it shall be lawful for the court of bankruptcy by writing, to order all persons whose act or consent is thereto necessary to transfer the same into the name of the assignees, and to pay all dividends upon the same to the official assignee; and all such persons whose act or consent is so necessary are thereby indemnified for all things done or permitted pursuant to such order. 12 & 13 Vict. c. 106, s. 128.

A similar provision was contained in sect. 80, 6 Geo. 4, c. 16.

Where a bankrupt had invested money in the purchase of stock, in a fictitious name, for the purpose of defrauding his creditors, the Court of Exchequer, on a bill filed by the assignees against the Bank of England, ordered the bank to erase from their books the fictitious name, and insert that of the bankrupt; *Green v. Bank of England*, 3 Yo. & C. 722. Under

circumstances of doubt, as to the right to stock standing in the bankrupt's name, an inquiry will be directed. *Ex parte Bacon*, 3 Madd. 28. Stock standing in the name of the bankrupt in trust for other persons does not pass to the assignees under the 125th section of the act 12 & 13 Vict. c. 106, although it is not entered in the name of the bankrupt as trustee in the bank's books. *Ex parte Witham*, 1 Mont. D. & D. 624; see *Ex parte Watkins*, 4 Dea. & C. 99.

As to the transmission of shares in a company subject to the provisions of the Companies Clauses Consolidation Act, 1845, or the special act, see 8 & 9 Vict. c. 16, s. 18; and Shelford's Law of Railways, pp. 101—123, 3rd ed.

When a trader, entitled to shares in a company, becomes bankrupt, his interest in the shares passes to his assignees; Shares in a company.
Penny v. Pickwick, 16 Beav. 246; but it by no means follows that they become shareholders in respect of such shares.

In 1819, a party entitled to a share in a coal mining company became bankrupt, dividends upon the share were declared in 1831 and 1838, and subsequently the share was carried over in the company's book to an account of "the proprietors of a share in this concern, heretofore T. A." (the bankrupt), and it so continued down to 1850, the time the assignees first made claim: it was held, that the right of the assignees to the dividends still subsisted, but that they were not entitled to any profits made by the retaining the dividends. *Penny v. Pickwick*, 16 Beav. 246.

An allottee of shares in a joint stock company completely registered under the 7 & 8 Vict. c. 110, directed his brokers to sell his shares, which they did. Before he had executed the deed of settlement he became bankrupt. Upon the petition of the brokers that the assignees might be directed to transfer: it was held, affirming the decision of the commissioner, that the allottee not having been registered as a shareholder, the sale was absolutely void both at law and in equity under the 20th section of the 7 & 8 Vict. c. 110. *Ex parte Neilson, re Edmond*, 23 L. J., Bank. 12; 3 De G., M. & G. 556. In order that the assignees may become shareholders, it is necessary for them to comply with the company's regulations in that behalf. The proprietor of shares in a company incorporated, and being registered as such proprietor in the books of the company, became bankrupt in 1847. The certificates of his shares were handed to his assignees and held by them. In June, 1849, an application was made to his assignees to pay a call which had been made upon the shares, but no payment was made nor upon two subsequent calls. By the 14th section of the company's act, 6 Geo. 4, c. 39, all shares were to be forfeited if the calls which were made upon them were not paid within three months after the time appointed, but that no advantage of the forfeiture should be taken unless thirty days' notice was given to the owner or owners thereof, nor unless the same were declared to be for-

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feited at some general or special general meeting. On the 13th March, 1851, advertisements were issued pursuant to the directions of the charter, for the annual general meeting to be held on the 31st of March, specifying that one of the purposes for holding such meeting was to declare the forfeiture of certain shares. They were so declared forfeited, and the proceedings were confirmed at the meeting of the 12th March, 1852. Notice of the forfeiture was sent to P. & Co., who were the attornies for the bankrupt and also for the assignees. P. & Co. returned answer that bankrupt had no longer any interest in the shares. On the 16th February, 1853, the assignees having made the affidavit appointed by the act, claimed to be registered as the proprietors of the shares. This the company refused to do: it was held, in an action by the assignees for not so registering them as proprietors; first, that the meeting of the 31st March was competent to declare the shares forfeited. *Graham v. Van Dieman Land Company*, 2 Jur. N. S. 1191; 1 H. & N. 541, Exch. Ch.; 11 Exch. 101; and secondly, that the assignees were not entitled to any notice of the forfeiture of the shares, as the name of the bankrupt was upon the register of proprietors at the time of the forfeiture. *Ib.*

The assignees of a bankrupt can only take his shares subject to the lien of the company upon them. *Ex parte Cooper*, 2 Mont., D. & D. 1; and if the shares are held by him in trust for other persons, his assignees will have no right to them whatever; *Prichett v. Wright*, 2 Hare, 120; unless the trust is a secret trust and the shares are in the order and disposition of the bankrupt. *Ex parte Burbridge*, 1 Dea. 131; 4 Dea. & C. 87. So the assignees of a shareholder who has pledged his shares can only take them subject to what is due upon them, unless they can claim them by virtue of the doctrine of reputed ownership. *Ex parte Dobson, re Boulton*, 2 Mont. D. & D. 685.

A bankrupt shareholder who has obtained his certificate is not a contributory in a company, if no losses or debts have been sustained or incurred by it since the bankruptcy; *Chapple's Case*, 5 De G. & S. 400; and even if there have been losses he will not be a contributory if the effect of his bankruptcy is to render him no longer a shareholder. *Greenshield's Case*, 5 De G. & S. 599. But otherwise he will. *South Staffordshire Railway Company v. Burnside*, 5 Exch. 129; see *Lindley on Part.*, p. 1097.

By the deed of settlement of a joint stock company, the shareholders covenanted to pay in manner thereafter mentioned the calls on their shares, and by a subsequent clause it was stipulated, that no assignees of bankrupts should be entitled to become shareholders in respect of the shares held by the bankrupt shareholder in the capital of the company, but that such assignee should be entitled to sell the same upon proof of the bankruptcy and of their title as assignees; and

by the next clause, a general power was given to the directors to make calls on the holders of shares other than the bankrupt shareholders: it was held, that the bankruptcy of a shareholder was an answer to an action for calls made and due after his certificate, although the assignees had not availed themselves of the power of sale, and the bankrupt still remained the nominal holder of the shares. *Wylam's Steam Fuel Company v. Street*, 10 Exch. 849; 24 L. J., Exch. 208.

If any bankrupt at the time he becomes bankrupt (*i. e. at the time of the act of bankruptcy*, *Fawcett v. Fawcett*, 6 Q. B. 20), shall by the consent and permission of the true owner thereof have in his possession, order or disposition any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale, alteration or disposition as owner, the court of bankruptcy shall have power to order the same to be sold and disposed of for the benefit of the creditors under the bankruptcy. 12 & 13 Vict. c. 106, s. 125; see *Shelford on the Law of Bankruptcy*, pp. 242—298, 3rd ed.

Shares in companies come within that clause; *Nelson v. London Assurance Company*, 2 Sim. & St. 292; *Ex parte Nutting*, 2 M., D. & D. 302.

Shares in reputed ownership of bankrupt.

Shares remain in the order and disposition of the transferor, unless the mode of transfer pointed out by the act of parliament is strictly followed. The ordinary mode of transfer will not, in such a case, constitute an equitable mortgage. And this rule holds, notwithstanding the statute expressly relates to transfers between third parties only, in instances where the company are the transferees. *Ex parte Lancaster Canal Company*, 1 Dea. & C. 411; Mont. & Bl. 94. If the interest in any share in a company incorporated by act of parliament have become transmitted in consequence of the bankruptcy of any shareholder, such transmission must be authenticated by a declaration, or in such other manner as the directors shall require. 8 & 9 Vict. c. 16, s. 18. A deposit had been made by the bankrupt of certain certificates of shares in a gas company, for securing the payment of a debt; but no notice was given to the company, nor any transfer made of the shares in their books. The company was not established under an act of parliament, but under a deed executed between the original shareholders, which declared that all property should be considered as personal estate; although part of the property possessed by the company consisted, in fact, of a copyhold estate: it was held, that the shares must be considered as personal property, and in the reputed ownership of the bankrupt, and that they consequently passed to his assignees. *Ex parte Vallance*, 2 Dea. 354. By the rules of a joint stock company, only principals could become subscribers. The petitioner purchased forty shares in the name of the bankrupt, who verbally declared that he held them as a trustee for the petitioner, and the certificates of the shares were kept in the possession of the peti-

Transfer of shares to prevent reputed ownership.

tioner; but no notice was given to the company of the trust, nor did the bankrupt sign a written declaration of trust, until seven days before the fiat was issued: it was held, that the shares were in the order and disposition of the bankrupt, as reputed owner, and passed to his assignees. *Ex parte Ord*, 1 Dea. 166; 2 Mont. & A. 724. Where shares of a company stand in the name of the bankrupt, who is on all occasions the only apparent owner and has possession of the certificates, but the shares belong to another in whose favour there is a secret declaration of trust, the shares are in the bankrupt's reputed ownership. Knowledge by one of the directors and by the actuary that the shares were not the bankrupt's, is insufficient to prevent reputed ownership. *Ex parte Watkins*, 1 Dea. 131; 2 Mont. & A. 348; reversing *S. C.*, 1 M. & A. 689; 4 Dea. & C. 87.

When shares not in bankrupt's order and disposition.

Shares will not be considered in the order and disposition of the bankrupt when he has parted with the possession of the certificates, and no transfer could be made without the authority of the parties for whose use the certificates had been deposited by the bankrupt. The bankrupt agreed with A., the managing director of a railway company, that certain shares belonging to the bankrupt should be a security for the payment of a bill accepted by A. for the accommodation of the bankrupt, which the bankrupt discounted with B., with whom the certificates of the shares were deposited; but no formal notice to the company was given of the transaction until four days before the fiat issued; nor was any transfer made of the shares in the books of the company, which were still standing in the bankrupt's name at the time of his bankruptcy. By the rules of the company no shares could be transferred without the consent of the directors; and A., as managing director, received all applications for the transfer of shares: it was held that the shares were not in the order and disposition or reputed ownership of the bankrupt. *Ex parte Harrison*, 3 Deac. 185.

A railway act prescribed a form of instrument for the transfer of shares, and provided that a memorial of the transfer should be entered in the company's books, and that until such memorial should be made the purchaser should have no share in the undertaking. A shareholder in the railway borrowed money on a deposit of the certificates of his shares, with assignments executed by him, but with the name of the transferee left in blank, and the blanks are not filled up before the shareholder becomes bankrupt: it was held, that the depository had a lien on the shares, and that the lien extended to sums paid by him in respect of calls. *Ex parte Dobson*, 2 Mont. D. & D. 685.

A transfer of shares in a joint stock company completely registered under 7 & 8 Vict. c. 110, was executed by a shareholder, a blank being left for the name of the transferee and for the date. On the day on which the transfer was executed

by the transferee, the assistant secretary certified on the transfer, on the application of the purchaser, that the certificates for the shares were at the company's office, the certificates not having yet been issued to the shareholders. Before the name of the purchaser was inserted in the transfer, the transferor became bankrupt. The assistant secretary of the company, in his evidence, said that after the certificate which he had made on the transfer, a transfer of the shares would not have been permitted except under the above transfer or upon the production of that transfer cancelled: it was held, by Stuart, V. C. that the shares were in the order and disposition of the transferor at the date of the bankruptcy; but upon appeal the Lord Chancellor reversed that decision upon the ground that the production of the deeds of transfer would have shown that the shares had been parted with or about to be parted with, and without the production of such deeds of transfer no alienation would have been permitted by the company, and as such deeds had been delivered over to a third party it was plain that the shares no longer remained in the bankrupt's order and disposition. *Morris v. Cannon*, 31 L. J., Ch. 425.

In order to take shares out of the order and disposition of a bankrupt shareholder who has deposited or mortgaged his shares, notice thereof must be given to the company; *Ex parte Littledale*, 6 De G., M. & G. 714. Notice has been implied where all the parties were partners in the company, the shares of which were deposited; *Ex parte Waitman*, 1 Mont. & A. 364; but now see *Thomas v. Speirs*, 13 Sim. 496. The mortgagee of shares in a company must give notice of his incumbrance to the secretary, or his lien will be lost as against a subsequent purchaser for valuable consideration. *Cumming v. Prescott*, 2 Y. & Col. 488. Where the bankrupt, who was a director of a joint stock company, mortgaged his shares to secure an advance of money, but stipulated that no notice should be given of the transaction to the company, not wishing it to be known to his brother directors, and the mortgagee acceded to this stipulation, the shares were to be held to be in the order and disposition of the bankrupt, within the meaning of the Bankrupt Act. *Ex parte Nutting*, 2 Mont., D. & D. 302; see *Ex parte Vallance*, 2 Dea. 354. A bankrupt, whose wife, previously to her marriage was entitled to some shares in a gas company, which were still standing in her name, deposited the certificates with a banking company for the security of advances; but no notice was given to the gas company until after the act of bankruptcy: it was held, that the banking company were not entitled to those shares as against the creditors of the bankrupt. *Ex parte Spencer*, 1 Dea. 468. By a clause in the deed of settlement of a banking company, it was stipulated that the company should have a lien on the shares of such proprietors as were customers and indebted to the bank, and that no share

Notice of transfer of shares requisite.

should be transferred without the consent of the directors; and an abstract of these provisions was indorsed on the certificate of the shares held by each proprietor. The bankrupt, at the time of his bankruptcy, was the owner of thirty of these shares, and had in his possession the certificates of ownership thus indorsed, being then largely indebted to the bank for advances. It was held, that these shares did not pass to the assignees under the clause of reputed ownership in the act 6 Geo. 4, c. 16, s. 72, which is the same as the 125th sect. of 12 & 13 Vict. c. 106, so as to defeat the lien of the bank, which had been provided for in the deed. *Ex parte Plant, Re Butterworth*, 4 Dea. & Ch. 160.

The bankrupt, on the 1st of March, deposited with the petitioner certificates of shares in a German mining company for securing a loan of money, with an agreement accompanying the deposit, by which he engaged to complete the transfer of the shares when required. The petitioner sealed up these documents in a packet, which she entrusted to the bankrupt to keep in his iron safe for better security, where the same remained until three weeks before the bankruptcy, when it was reclaimed by the petitioner. The bankrupt, long before his bankruptcy, told one of the directors of the company that he had deposited the certificates with the petitioner; and such director, on the morning of the 7th December, communicated that fact to the board of directors; and in the evening of that day the act of bankruptcy was committed. It was held, that the shares were not in the reputed ownership or in the order and disposition of the bankrupt at the time of his bankruptcy. *Ex parte Richardson*, 3 Dea. 496.

On a contract for the purchase of fifty shares in a mining company the vendor agreed to take acceptances of bills of exchange for the amount of the purchase-money. It ultimately turned out that the vendor only possessed nineteen shares. On the purchaser producing the transfer of the shares, the officer of the company refused to register on account of the discrepancies between the number of the shares named in the transfer and the number standing in the company's books in the name of the vendor. The contract remained uncompleted at the time of the bankruptcy of the vendor. The purchaser satisfied the bills of exchange at maturity. It was held by Mr. Commissioner Goulburn, that the shares were not in the bankrupt's order and disposition. *Ex parte Rayner, Re Hommersham*, 1 Bank. & Ins. R. 256.

It was said that, though a bankrupt may be up to his ears in insolvency, notice at any fractional period of the day on which the act of bankruptcy is committed is sufficient to take the case out of the clause of reputed ownership, if the notice be given before the act of bankruptcy is in fact committed. *Per Sir G. Rose, Ex parte Richardson*, 3 Dea. 506; see *Garlick v. Sangster*, 9 Bing. 46; *Russell v. Ledsam*, 14 M. & W. 582.

Public com-

All bodies politic and public companies incorporated or

authorized to sue or bring actions, either by charter or act of parliament, may prove by an agent, provided such agent shall, in his declaration, declare that he is such agent, and that he is authorized to make such proof; and such declaration, signed by such creditor and agent as aforesaid, shall be in such form as general orders shall direct. 24 & 25 Vict. c. 134, s. 144. See also 12 & 13 Vict. c. 10; c. 106, s. 164.

The following is the form of declaration under section 144 of 24 & 25 Vict. c. 134, s. 144.

Declaration for Proof of Debt by Agent of Company incorporated, or authorized to sue and bring Actions.

In the Court of Bankruptcy, London.
[Or, "In the Court of Bankruptcy for the district at ."]

In the matter of bankrupt.

I, A. B., of , agent of , being a public company incorporated [or authorized to sue and bring actions] and carrying on business at , do solemnly declare that I am such agent, and duly authorized to make this proof, and that the statement of the debt [and of the account, *if any*] between the said company and the said bankrupt, hereunto annexed, is a full, true and complete* statement of account between the said company and the said bankrupt, and that it is within my own knowledge that the debt thereby appearing to be due from the estate of the said bankrupt to the said company was incurred on or before the day of [the date of the bankruptcy] and for the consideration therein stated, and that to the best of my knowledge and belief the said debt still remains unpaid and unsatisfied.

Signed, A. B.

Agent of the company above named.

Declared before me at
this day of 186

[The declaration may be made before any court or person authorized to take affidavits, &c. in bankruptcy, under sect. 207 of the act 24 & 25 Vict. c. 134. See Shelford's Law of Bankruptcy, pp. 644—647 (3rd ed.).]

A member of a joint stock banking company kept an account with them as his bankers, and at the time of his bankruptcy was indebted to them in a large balance on such banking account, the company being also considerably indebted to various other persons: it was held, that the company had a right of proof against the bankrupt for the balance due on such banking account. *Re Caldecott, Ex parte Da-* Banking company.

* Any bills, notes or other securities held in respect of the debt must be set forth in the statement of account, and if there be any set-off, the balance only should be claimed.

Part IV.—Winding up of Companies, &c.

vidson, 2 M., D. & D. 368; 1 *Ib.* 648; see 7 Geo. 4, c. 46, s. 46; 1 & 2 Vict. c. 96, s. 1; 3 & 4 Vict. c. 111; *Ex parte Wallis*, 2 Mont., D. & D. 201. The secretary of a railway company, who had been reported by the commissioner to be indebted for deposits on shares, was allowed to prove, the assignees of the company being left to their legal remedies for establishing their claim against him as a shareholder. *Ex parte Green, Re Tring, &c. Railway Company*, 13 Jur. 275.

The official manager might prove against the estate of a bankrupt contributory. If the creditors of a company also proved, the dividends payable to the official manager were to go to such creditors. If any such creditor be the petitioning creditor, the dividends received by him are to be set against dividends payable to the official manager. Winding-up Act, 1849, 12 & 13 Vict. c. 108, s. 30.

By the Joint Stock Companies Winding-up Acts (7 & 8 Vict. c. 111; 11 & 12 Vict. c. 45; 12 & 13 Vict. c. 108), the general body of separate creditors of a bankrupt who happens to be a contributory to a joint stock company, which is made liable to those acts, are placed in a different position from the general separate creditors of any other person engaged in a mercantile partnership. A shareholder in a joint stock banking company became bankrupt. Afterwards an order for the winding-up the affairs of the banking company was made. Subsequently the bankrupt obtained his certificate, and his name was afterwards included in the list of contributories. On a call being afterwards made, the official manager, by the master's direction, applied to prove for the balance due from the bankrupt after debiting him with the call. It was held, that the proof ought to have been admitted. *Ex parte Nicholas's Assignees, Re Monmouthshire and Glamorgan-shire Banking Company*, 2 De G., M. & G. 271; 1 *Ib.*, B. C. 143; 21 L. J., Bank. 64; 17 Jur. 6.

A shareholder in a joint stock banking company directed to be wound up under the Joint Stock Companies Winding-up Act, 1848, had a call made on him in respect of his shares, and was shortly after made a bankrupt: it was held, that the official manager had a right to prove for the amount against his separate estate. *Ex parte Brown*, 13 Jur. 978; 19 L. J., Bank. 4; 3 De G. & S. 590.

Bankrupt's
interest in
joint stock
company.

A shareholder in a joint stock trading company became bankrupt; the joint stock company continued for a year subsequent to the bankruptcy to carry on its business and then stopped, and its affairs were then ordered to be wound up under the Winding-up Acts. By the company's deed of settlement the assignees of the bankrupt shareholder were authorized to sell his shares. The assignees of this bankrupt shareholder did not avail themselves of this provision. The master placed the names of the assignees upon the list of contributories as liable in respect of the bankrupt's estate up

to the bankruptcy, on which the assignees disclaimed. The master then placed the name of the bankrupt, who was certified, upon the list as liable in respect of calls made subsequently to his bankruptcy. It was held, that shares in a joint stock partnership were not property as the shares in an incorporated company, but that they were an interest determinable on bankruptcy, and that the bankrupt's name ought not to be on the list in respect of liabilities subsequent to his bankruptcy, by which the partnership was dissolved, and from that time the bankrupt ceased to have any interest in the concern except for the purpose of ascertaining what was due from or to him at the date of the bankruptcy. *Re Liverpool Marine Insurance Company, Greenshield's Case*, 5 De G. & S. 599; 16 Jur. 517; 21 L. J., Ch. 733.

The official managers of a defunct banking company in course of winding-up under the Joint Stock Companies Winding-up Acts claimed to prove the sum of 300,000*l.* against the estate of a bankrupt, who had been reported by the master a contributory to the company, but had offered to take 17,000*l.* in full discharge of the claim made. Actual proof had not been made against the estate by the official manager, but it appeared there was every probability of their establishing by legal proof the debt claimed. At a meeting of the creditors duly convened for the purpose they approved of the proposed compromise, and authorized the assignees to enter into it subject to the confirmation of the court. The court upon proof of the facts confirmed the resolution of the creditors, and directed the 17,000*l.* to be paid out of the estate before the actual proof of the debt, it appearing the compromise would be highly beneficial to the creditors. *Re Jones*, 23 L. T. 52.

A railway act prescribed a form of instrument for the transfer of shares, and provided that a memorial of the transfer should be entered in the company's books, and that until such memorial should be made, the purchaser should have no share in the undertaking. A shareholder in the railway borrowed money on a deposit of the certificates of his shares, with an assignment executed by him, but with the name of the transferee left in blank, and the blanks were not filled up before the shareholder became bankrupt. It was held, that the depositary had a lien on the shares, and that the lien extended to sums paid by him in respect of calls. *Ex parte Dobson*, 2 Mont., D. & D. 685.

A shareholder in a company, the settlement deed of which prescribed a specified mode for the transfer of shares, and excluded from being shareholders all who are not shippers of goods, deposited the certificates of his shares by way of mortgage with a person not of the prescribed description, and without following the prescribed mode of alienating: it was held, that the deposit created a valid lien as against his assign-

Equitable
assignment
of shares in
a company.

nées on his becoming bankrupt. It seems that reputed ownership of shares must be proved to have existed, and is not conclusively to be inferred from the absence of notice of a lien upon them. *Ex parte Pooley*, 2 Mont., D. & D. 505.

Trust funds were invested in the purchase of transferable shares in a banking company, in the name of one of the trustees, who executed a declaration of the trusts thereof (the rules of the company not allowing shares to stand in the name of joint owners, *cestuis que trust*). The trustee was also a proprietor of shares in his own right in the same company, and made various sales and purchases of shares therein. There was nothing to distinguish which were the individual shares held by the different proprietors, the same being in the nature of a capital expressed by quantity. The trustee contracted to assign a certain number of shares to the banking company as a security for advances which they made to him; he afterwards became bankrupt. It was held, that the trustee must be presumed to have transferred or pledged such shares as belonged to himself, and so far as he had shares of his own, and not to have transferred or pledged the shares of his *cestuis que trust*. That therefore the *cestuis que trust* were entitled to so many of the shares standing in the name of the trustee at the time of his bankruptcy as could be presumed to be identical with the shares in which the trust funds were invested, from the fact that such a number of shares had always thenceforward stood in the name of the trustee. That, having regard to the deed of association, the banking company had no lien founded on the general relation of partnership on the shares of a proprietor in respect of a debt owing by the proprietor to the company. That the right which the directors of the banking company might have under the deed of association, of withholding their approval of the transfer of the shares, cannot be exercised for the purpose of previously obtaining payment of a debt due to the bank from the proprietor whose shares are proposed to be transferred. That the equitable title of the *cestuis que trust* to the shares purchased with the trust funds was perfected without notice to the banking company, by the execution of the declaration of trust thereof. That the special contract by the proprietor to assign his shares to the banking company as a security for their advances, gave the bank a lien on the shares then standing in the name of the proprietor, of which he was the beneficial owner; and it seems that the same were not in his order and disposition at the time of the bankruptcy. *Pinkett v. Wright*, 2 Hare, 120; 12 L. J., N. S., Ch. 119.

Where a bankrupt had contracted to buy some shares in the United States Bank, the certificates of which were left in the hands of the vendor as a security for the payment of the greatest portion of the purchase-money: it was held, that the vendor was entitled, as in the case of an equitable mort-

gage, to an order for the sale of the shares in satisfaction of the unpaid purchase-money, with liberty to prove for the difference. *Ex parte Sheppard*, 2 Mont., D. & D. 431.

Although the Joint Stock Companies Act, 1856, provides, that unlimited companies shall be wound up in chancery, and limited companies in bankruptcy, yet where a company which existed with unlimited liability before 1856 was, upon the passing of that act, registered under it with limited liability, with no other change in its constitution, and was subsequently ordered to be wound up, the jurisdiction is in the Court of Bankruptcy to deal with it, both before and after such registration. A company so registered and re-registered remains the same throughout, and although the shares are fully paid up the Court of Bankruptcy can make a call upon the shareholders at the time of the second registration to discharge debts which were due from the company at that time. *Ex parte Stevenson, re Liverpool Tradesman's Loan Company (Limited)*, 7 L. T., N. S. 453.

78. If any female contributory marries either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.

Contributories in case of marriage (a).

(a) A woman was, before her marriage, the registered proprietor of shares in a banking company. Upon her marriage a settlement was executed, by which the shares were assigned to trustees upon trusts for her separate use, but the trustees did not accept the trusts and the shares continued to be registered in her former name. It was not proved that the company had notice of the marriage or of the settlement. The company was afterwards registered under the Joint Stock Banking Companies Act, 1857, and wound up under the Joint Stock Companies Acts of 1856, 1857: it was held, that the name of the husband, in right of his wife, must be placed on the list of contributories as well as that of his wife.

Female contributories.

It seems that notice to the company of the marriage and of the settlement would not have altered the case. *Re Northumberland and Durham District Banking Company, Ex parte Luard*, 1 De G., F. & J. 533; 29 L. J., Chan. 269.

A man who marries a woman who is an actual shareholder at the time of the marriage and allows her shares to continue in her name, will be liable as a contributory. *Robinson's Case*, 3 De G. & S. 18; *Sadler's Case*, Ib. 36. In such a case both the husband and wife ought to be placed on the list, in order

that she may be liable if she be the survivor. *Sadler's Case*, *supra*. A husband not being by law liable after his wife's death for her debts contracted before marriage, is only liable as a contributory to the extent of the debts or liabilities of the company incurred during the marriage, unless the shares have become his property. *Fenwick's Case*, 1 De G. & S. 557. See *Ness v. Angus*, L. J., 1849, Exch. 470; *Ness v. Armstrong*, *Ib.* 473; *Bosanquet v. Shortridge*, 4 Exch. 699; *Straffon's Executors*, L. J., 1853, Ch. 194.

Lunatics and minors.

The 38th section of the act 1848, 11 & 12 Vict. c. 45, s. 39, provided, that any contributory being an idiot or lunatic should be sufficiently represented in winding-up proceedings by his committee. Any contributory being a minor was to be sufficiently represented by his father or guardian, if any, or by his mother or otherwise by a next friend, but an order might be made for appointing a guardian of a minor contributory, or to represent any lunatic contributory not so found by inquisition. That section recognized the probability of an infant being a contributory. It is conceived that, in the absence of special circumstances, an infant cannot be considered as a contributory, except where it may be beneficial to him to hold shares with the consequent burdens. See Shelford's *Law of Railways*, pp. 137, 138, 3rd ed. The infant's shares in an insolvent company would be repudiated. *Reed's Case*, 24 Beav. 318. But an infant who had represented himself to be of full age would be estopped by his own misrepresentation. *Wright v. Snowe*, 2 De G. & S. 321; *Ex parte Unity Banking Assurance*, 3 De G. & J. 63; *Ex parte Bates*, 2 M., D. & D. 337; *Ex parte Watson*, 16 Ves. 265. See Shelford's *Law of Bankruptcy*, pp. 113, 114, 3rd ed.

Where shares were sold to a minor and transferred to him, upon the vendor's declaration that he was of age, and the minor's father covenanted that his son would execute the requisite deed when of age, and indemnify the company against costs, by reason of the minority: it was held, that the father was a contributory. *Ex parte Reaveley*, 12 Jur. 1065; 1 De G. & S. 550; see observations on this case, *Straffon's Executors*, L. J., 1853, Ch. 199; *Litchfield's Case*, 3 De G. & S. 141; as to notice to the company of the infancy of a person to whom shares were transferred, see *Stikeman v. Dawson*, 4 Railw. C. 585.

It has sometimes happened that shares have been transferred into the name of an infant by some person, with the view of evading the obligations attached to a shareholder, but such a device is ineffectual, as the party beneficially entitled will be held to be liable as a contributory.

Shares were purchased by a father in a joint stock company for his two infant sons, in the name of their uncle as a trustee, and the name of the latter was so entered in the company's register. It was afterwards admitted by the uncle that the

father was entitled to the profits of the shares until the infants came of age, and the uncle agreed thereupon to assign the shares to the infants, and the father agreed to indemnify the uncle in respect of the shares. The father, having received the dividends through the uncle, was removed from the list of contributories. *Fenwick's Case*, 1 De G. & S. 557.

As to contributories in general, see *post*, sect. 99, p. 114, note.

Winding-up by Court.

79. A company under this act may be wound up by the court as hereinafter defined (*b*), under the following circumstances, (that is to say,)

Circumstances under which company may be wound up by court (*a*).

- (1.) Whenever the company has passed a special resolution (*c*) requiring the company to be wound up by the court;
- (2.) Whenever the company does not commence its business within a year from its incorporation (*d*) or suspends its business for the space of a whole year;
- (3.) Whenever the members are reduced in number to less than seven (*e*);
- (4.) Whenever the company is unable to pay its debts;
- (5.) Whenever the court is of opinion that it is just and equitable that the company should be wound up (*f*).

(*a*) See 19 & 20 Vict. c. 47, which did not contain pl. 5, but contained the following words,—“whenever three-fourths of the capital of the company have been lost or become unavailable:” on the construction of which words, notwithstanding the above words, it was held, that by the 72nd section of that act a discretion was given to the court to make such order, upon a petition to wind-up a company, as it thought fit. *Re Metropolitan Saloon Omnibus Company, Ex parte Hawkins*, 5 Jur. N. S. 922; 28 L. J., Ch. 830; 7 W. R. 636. The petition by a shareholder to wind-up a company on the above ground was dismissed, as the evidence showed a want of *bona fides* on the part of the petitioner, and it was not clearly shown that three-fourths of the capital of the company had been lost. *Ib.* The above words appear to be omitted to prevent similar applications by dissatisfied shareholders.

Under what circumstances an unregistered company may be wound-up, see *post*, s. 199.

(*b*) Sect. 81, *post*, p. 103.

(*c*) As to special resolutions, see ss. 50, 51, *ante*, p. 53.

(d) The date of the registrar's certificate, s. 18, *ante*, p. 24.

(e) See ss. 6, 48, *ante*, pp. 5, 52.

When winding-up order will be made.

(f) The same words in 11 & 12 Vict. c. 45, s. 5, were held to include all cases not before mentioned, which are not to be interpreted otherwise than in reference to matters of the same genus in the previous clauses. In order to justify a winding-up order there must be something in the management and conduct of the company to convince the court that it should be no longer allowed to continue. *Ex parte Spackman, re Agriculturist Cattle Insurance Company*, 1 Hall & T. 229; see p. 235; 1 Mac. & G. 170, 174; see *Latter's Cases*, 3 De G. & S. 604; *Re National, &c. Live Cattle Insurance Company*, L. J. 1858, Ch. 669; *Sherwood Loan Society*, L. J. 1851, Ch. 177; *James' Case*, L. J. 1851, Ch. 275; *Re Monmouthshire, &c. Banking Company*, 15 Beav. 74.

In winding-up the affairs of a company the court, notwithstanding the opposition of a large shareholder, has jurisdiction under the Joint Stock Companies Acts to direct a compromise of any claim against the company to be carried into effect, if apparently it is for the benefit of the greater number of shareholders. *Re the Risca Coal and Iron Company*, 31 L. J., Ch. 283.

With reference to the winding-up, Turner, L. J., expressed an opinion that a winding-up by the court, rather than a voluntary winding-up, should be adopted in cases of enormous magnitude, where vast interests are at stake—where the most ample powers which the law has given must be required to be exercised—where there have been transactions justifying, if not requiring, investigation—where it may be doubtful whether the property of the shareholders will answer the liabilities, and where there is danger to the creditors of the shareholders escaping from their liabilities. He also expressed an opinion that the legislature not having thought proper to provide that the majority of creditors should have power to bind the minority in the choice of proceedings (a provision which, although introduced into the bankrupt acts has not been introduced into the Winding-up Act), he should not be disposed to give any decided weight to the opinion of the majority of the creditors against the minority, upon the question as to the choice of proceedings, without being fully satisfied, not merely by the votes of the majority, but by the facts of the case, that there would be secured to the minority the full dividend which they might obtain if the course of proceedings which they desired were adopted. *Re Northumberland and Durham District Banking Company*, 2 De G. & J. 378, 379; see *ante*, pp. 78—81.

Company when deemed unable to pay its debts (a).

80. A company under this act shall be deemed to be unable to pay its debts,

(1.) Whenever a creditor, by assignment or other-

wise, to whom the company is indebted, at law or in equity, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor (*b*);

- (2.) Whenever, in England and Ireland, execution or other process issued on a judgment, decree or order obtained in any court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part (*c*);
- (3.) Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made;
- (4.) Wherever it is proved to the satisfaction of the court that the company is unable to pay its debts (*d*).

(*a*) This section is nearly the same as 68th section, 19 & 20 Vict. c. 47, which does not contain pl. 4.

Who may apply for winding-up order.

(*b*) A person claiming to be a creditor of a limited company, served a demand under the corresponding section 68 of the 19 & 20 Vict. c. 47, and the company not having paid, secured or compounded for the claim, he presented a petition for winding-up. It did not appear that there was any ground for supposing the company unable to pay its debts, and the company disputed the debt, there being unsettled accounts between the company and the petitioner, so that it could not on the materials before the court be ascertained whether any thing was due to the petitioner or not: it was held, that the petition ought not to be dismissed, but it was ordered to stand over till it had been ascertained by proceedings at law whether the petitioner was a creditor or not. *Ex parte and re Rhydydefed Colliery Company*, 3 De G. & J. 80.

Any creditor or contributory may take advantage of a de-

mand requiring payment of his debt served by another on a company, and the neglect of the company to pay, secure or compound for the same within the time prescribed by sect. 68, clause 1, of the 19 & 20 Vict. c. 47, as a foundation for a petition to wind-up the company. *Ex parte Owen, Re Island of Anglesea Coal and Coke Company*, 4 L. J., N. S. 684—Holroyd, Com.

A joint stock company completely registered became bankrupt. One of the members of the company had previously been declared a bankrupt and had obtained his certificate. The master placed the bankrupt's name on the list of contributories, and calls were made by the master upon him for contribution to discharge the liabilities of the company incurred before his bankruptcy: it was held, on appeal, that the certificate was a bar to the liabilities, to satisfy which the calls had been made, and that the bankrupt's name ought to be removed from the list of contributories. *Chapple's Case*, 5 De G. & S. 401; see *Roper's Assignees' Case*, 3 Id. 113; *Ex parte Brown, Re Fenwick*, 3 Id. 590.

(c) An assignee of a debt from a company to an amount under 50*l.* upon which judgment had been obtained and execution issued, petitioned in his own name and as attorney of the original creditor for a winding-up order under the Joint Stock Companies Act, 1856, 1857. The commissioner dismissed the petition as the debt was under 50*l.* and the petition was not presented by the legal creditor; but upon appeal this was reversed, the court considering that there having been execution the amount of the debt was unimportant, and that the petition was regular, it being presented in the name of the original creditor. *Re London and Birmingham Flint Glass Company*, 28 L. J., Bank. 17; 7 W. R. 539; 1 De G. & J. 257.

(d) A shareholder in a new company gave notice to a third company, to whom the new company had assigned its business, not to pay certain monies due from them to the new company, in consequence of which litigation ensued. The shareholder then presented his petition to wind up the new company: it was held, that the existence of suits against the company was not, *per se*, proof of its insolvency, and the petition was ordered to stand over, with liberty to apply. *Re Anglo Australian and Universal Family Life Assurance Company, Ex parte Smith, Re British Provident Society, Ex parte Collins*, 1 Drew. & Sm. 113.

A company will not be regarded as unable to pay its debts simply because it had not paid a debt which it disputes, and which the creditor has not established by action. *Ex parte Owen*, 4 L. T., N. S. 684—Holroyd, Com.

Definition of
"the court."

81. The expression "the court," as used in this

part of this act, shall mean the following authorities, (that is to say,)

In the case of a company engaged in working any mine within and subject to the jurisdiction of the stannaries,—the court of the vice-warden of the stannaries, unless the vice-warden certifies that in his opinion the company would be more advantageously wound up in the High Court of Chancery, in which case “the court” shall mean the High Court of Chancery;

In the case of a company registered in England that is not engaged in working any such mine as aforesaid,—the High Court of Chancery;

In the case of a company registered in Ireland, the Court of Chancery in Ireland;

In all cases of companies registered in Scotland, the Court of Session in either division thereof:

Provided, that where the Court of Chancery in England or Ireland makes an order (*a*) for winding up a company under this act, it may, if it thinks fit, direct all subsequent proceedings for winding up the same to be had in the Court of Bankruptcy having jurisdiction in the place in which the registered office of the company is situate (*b*); and thereupon such last-mentioned Court of Bankruptcy shall, for the purposes of winding-up the company, be deemed to be “the court” within the meaning of the act, and shall have for the purposes of such winding-up all the powers of the High Court of Chancery, or of the Court of Chancery in Ireland, as the case may require (*c*).

(*a*) See form of order under this section, No. 3, *post*.

(*b*) As to the jurisdiction of the courts of bankruptcy, see Shelford's Law of Bankruptcy, pp. 21—41, 3rd ed.

(*c*) In the case of a company registered in 1852 as an unlimited company under 7 & 8 Vict. c. 110, and registered in 1856 as a limited company under the Joint Stock Companies Acts, 1856, 1857: it was held, that the Court of Chancery had no jurisdiction to make a winding-up order, the Court of Bankruptcy alone having jurisdiction in such a case. In a suit which was instituted by an official manager of a company appointed under an order of the Court of Chancery to wind

it up, a defendant may contest the validity of the order and show that the court had no jurisdiction to make it. *Plumstead, Woolwich and Charlton Consumers Water Company (Official Manager) v. Davis*, 28 Beav. 545; affirmed on appeal, 29 L. J., Ch. 388; 6 Jur. N. S. 309; see Shelford on Law of Bankruptcy, pp. 500—502, 3rd ed.

Where the Court of Chancery had made an order in a winding-up case for the further proceedings to be taken in a particular court of bankruptcy: it was decided, that such court had jurisdiction to commit persons disobeying its order in such further proceedings. *Ex parte Hirtzel, Re United General Bread and Flour Company*, 30 L. J., Ch. 88.

The Joint Stock Companies Acts, 1856, 1857 and 1858, did not take away from the Court of Chancery the jurisdiction to adjudicate upon a disputed claim against a company which is in course of voluntary winding-up. *Lowndes v. The Garnett and Moseley Gold Mining Company of America (Limited)*, 31 L. J., Chanc. 451.

A savings bank not registered under the Banking Act must be wound up in bankruptcy. *Ex parte Coe, Re the District Savings Bank (Limited)*, 31 L. J., Chanc. 319.

A petition for winding-up a company was presented before its bankruptcy, but was heard afterwards. There having been no application by the assignee to wind it up, the court held, that notwithstanding the 11 & 12 Vict. c. 45, s. 6 (which prevents any other person than the assignee applying for a winding-up order after a fiat), it had jurisdiction to make the order, and it made the order accordingly. A petition presented by a shareholder to wind-up a company after a petition to make the company bankrupt has been presented, but before any adjudication, is irregular and will be dismissed with costs. *Re Mitre General Life Assurance Association*, 29 Beav. 1.

Any society registered under the Industrial and Provident Societies Act, 1862, may be wound up under this act either by the court or voluntarily. The court having jurisdiction in such case will be the county court of the district in which the office of the society is situated. 25 & 26 Vict. c. 87, s. 17.

Application
for winding
up to be
made by
petition.

82. Any application to the court for the winding-up of a company under this act shall be by petition (*a*); it may be presented by the company, or by any one or more creditor or creditors, contributory or contributories (*b*) of the company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition shall operate in favor of all the creditors and all the contributories of the company in the

same manner as if it had been made upon the joint petition of a creditor and a contributory (c).

(a) See general orders as to the petition, *post*, Nos. 1—5, and forms 1 and 2 in the schedule thereto. As to the order to wind-up, see rules 6 and 7 and forms 3—5 in the 3rd schedule to this act.

(b) See definition of contributory, sect. 74, *ante*, p. 76.

(c) See form of order under this section, No. 3, *post*.

83. Any judge of the High Court of Chancery may do in chambers any act which the court is hereby authorized to do; and the vice-warden of the stannaries may direct that a petition for winding-up a company be heard by him at such time and at such place within the jurisdiction of the stannaries, or within or near to the place where the registered office of the company is situated, as he may deem to be convenient to the parties concerned, or (with the consent of the parties concerned) at any place in England; and all orders made thereupon shall have the same force and effect as if they had been made by the vice-warden sitting at Truro or elsewhere within the jurisdiction of the court, and all parties and persons summoned to attend at the hearing of any such petition shall be compellable to give their attendance before the vice-warden by like process and in like manner as at the hearing of any cause or matter at the usual sitting of the said court; and the registrar of the court may, subject to exception or appeal to the vice-warden as heretofore used, do and exercise such and the like acts and powers in the matter of winding-up as he is now used to do and exercise in a suit on the equity side of the said court.

Power of court.

84. A winding-up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Commencement of winding-up by court (d).

(d) This differs from sect. 64 of 19 & 20 Vict. c. 47.

85. The court may, at any time after the presentation of a petition for winding-up a company under this act, and before making an order for

Court may grant injunction (e).

winding-up the company, upon the application of the company, or of any creditor or contributory of the company, restrain (*f*) further proceedings in any action, suit or proceeding against the company, upon such terms as the court thinks fit; the court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator (*g*) of the estate and effects of the company (*h*).

(*e*) This differs materially from the 84th section, 19 & 20 Vict. c. 47.

(*f*) Where upon the winding-up of a banking company, which was also adjudicated bankrupt, a contributory against whom judgment had been signed on a *scire facias* effected a compromise and obtained a certificate under the 20 & 21 Vict. c. 78, the court stayed all further proceedings on the judgment without imposing any terms. *Cleave v. Harwar*, 6 H. & N. 22.

Where upon a petition to wind-up it appears that the capital of the company has been expended in a manner contemplated by the articles of association, and there is no sufficient evidence that the company is unable to pay its debts, or that there is no regularly constituted body to carry on its business, and there appears no prospect of immediate danger to the property of the company, the court will not exercise the power given by sect. 84 of 19 & 20 Vict. c. 47, and appoint a receiver before the hearing, or grant an injunction to restrain actions pending against the company, simply because they may result in preferences. *Ex parte Tucker, re Folkestone West Cliff Hotel Company*, 4 L. T., N. S. 529—Holroyd, Com.

Mode of enforcing writs of injunction against corporations.

Writs of injunction against a corporation may be enforced either by attachment against the directors or other officers thereof as in the case of a mandamus or by writ of sequestration against their property and effects, to be issued in such form and tested and returnable in like manner as writs of execution, and to be proceeded upon and executed in like manner as writs of execution issuing out of the Court of Chancery. 23 & 24 Vict. c. 126, s. 33.

(*g*) See sect. 92, *post*, p. 109.

(*h*) See *post*, sect. 197, and as to the power of the court to restrain proceedings with respect to the winding-up of unregistered companies, *post*, ss. 201—204, and Rules Nos. 15 and 59 as to provisional official liquidators.

Course to be pursued by court on hearing petition (*a*).

86. Upon hearing the petition the court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally,

and may make any interim order, or any other order that it deems just (b).

(a) See 19 & 20 Vict. c. 47, ss. 70, 71, 72.

(b) See general orders, Nos. 6, 7. As to order by the court to wind-up, *post*.

Where a winding-up order is discharged the official manager appointed under it is not entitled, out of the estate of the company, to his costs incident to his appointment or to his costs in a suit instituted under the direction of the court or to any remuneration. *Ex parte Harding*, 8 Jur. N. S. 1140.

Where, after a petition to wind-up a company, the petitioning creditor's debt was tendered, minus the costs incurred by him in respect of his petition, the court put the company upon terms either to pay the costs of the petitioner within a fortnight, or to be wound up. *Ex parte Mackrill, Re St. John's United Copper and Lead Mining Company, Newfoundland*, 4 L. T., N. S. 260—Evans, Com. Costs.

In July, 1850, the master, by an order by consent, directed that the bill of costs of the solicitors of a company then being wound-up should be paid by the official manager out of the first monies which should come to his hands from the assets of the company or the contributories thereof; and that the solicitors who had previously refused to do so without being guaranteed the payment of their costs to deliver up forthwith to the official manager all the books and papers belonging to the company. In February, 1856, an order for a call was made, but it was never enforced, as the debts of the contributories were settled by compromise. In May, 1856, the master, on the application of the solicitors for that purpose, refused to make a call upon the contributories in order that their bill of costs might be paid out of the proceeds of such call. Upon motion on appeal to discharge the order of May, the court declined to interfere and no order was made. *Ex parte A' Beckett*, 2 Jur. N. S. 684—V. C. S. Where it appeared that the books of the official manager had not been perfectly kept the court refused to make any order as to his costs. *Ib*.

Where it appeared upon an appeal that the creditors' representatives had no interest distinct from that of the official manager, the greater part of the costs of the separate appearance of the former were disallowed out of the estate, and only a small fixed sum given them towards such costs, the court being of opinion that he should have joined in the appeal of the official manager. *Ex parte Cotterell, Re National Assurance and Investment Association (The Bank of Deposit)*, 7 L. T., N. S. 341.

87. When an order has been made for winding-up a company under this act no suit, action or other Actions and suits to be stayed after

order for
winding-
up (a).

proceeding shall be proceeded with (b) or commenced against the company except with the leave of the court, and subject to such terms as the court may impose (c).

(a) See 19 & 20 Vict. c. 47, ss. 74, 84; 21 & 22 Vict. c. 60, s. 9, 20 & 21 Vict. c. 78, s. 7.

(b) See s. 198, *post*, and s. 202, as to unregistered companies. After a company had been adjudicated bankrupt and an order in chancery had been pronounced for winding-up its affairs a creditor of the company obtained judgment against the official manager, and then having first obtained leave by a judge's order, sued out a writ of *elegit* against the property and effects of a shareholder of the company, under which the lands of the shareholder were delivered to him by the sheriff. He then filed a bill as tenant by *elegit* to redeem a mortgage upon the lands prior in point of date to the execution: it was held, upon demurrer, that the bill was not within the prohibition of the 20 & 21 Vict. c. 78, s. 7, which act had passed since the filing of the bill. *Barnes v. Thrupp*, 3 Jur. N. S. 1242; 27 L. J., Chanc. 183—V. C. S.

Where, on the day on which a winding-up order was made, but before the order was pronounced, a judgment creditor of the company issued a *fi. fa.* against the effects of the company, but before the execution was levied the official liquidator obtained possession of such effects under the order, the court granted an injunction to restrain the creditor and sheriff from proceeding to execution. *Re Waterloo Education, &c. Assurance Company*, 11 W. R. 159.

Copy of
order to be
forwarded to
registrar (d).

88. When an order has been made for winding up a company under this act, a copy of such order shall forthwith be forwarded by the company to the registrar of the joint stock companies, who shall make a minute thereof in his books relating to the company.

(d) See 19 & 20 Vict. c. 47, s. 73.

Power of
court to stay
proceed-
ings (e).

89. The court may at any time after an order has been made for winding-up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether

or for a limited time, on such terms and subject to such conditions as it deems fit.

(e) The same as sect. 85, 19 & 20 Vict. c. 85.

90. When an order has been made for winding-up a company limited by guarantee and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company and to be a debt (in England and Ireland of the nature of a specialty (*f*)) due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the court (*g*).

Effect of order on share capital of company limited by guarantee.

(*f*) See *ante*, p. 83, n. (*b*); sect. 38, pp. 45, 46, and sect. 134, *post*.

(*g*) See sect. 9, *ante*, p. 17, and sect. 134, *post*.

91. The court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court: in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company (*h*).

Court may have regard to wishes of creditors or contributories.

(*h*) See s. 149, *post*, and Rules Nos. 45—47, as to meetings under this section. The direction of the judge for any meeting of creditors under this section, and of a chairman of such meeting, shall be stamped by a memorandum signed by the chief clerk of the judge. See Rule, No. 47.

Official Liquidators (i).

92. For the purpose of conducting the proceedings in winding-up a company, and assisting the

Appointment of official liquidator (*k*).

court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators (*l*); and the court having jurisdiction may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators; in all cases if more persons than one are appointed to the office of official liquidator, the court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons. The court may also determine whether any and what security is to be given by any official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the court.

(*i*) See Rules, Nos. 8—19, *post*.

(*k*) See 19 & 20 Vict. c. 47, s. 88.

(*l*) Liquidators appointed to wind-up a company under the Joint Stock Banking Companies Act, 1857, ought as a general rule to be disinterested persons, and neither creditors nor shareholders. *In re Northumberland and Durham District Banking Company*, 2 De G. & J. 508.

Appointment
of official
manager.

Where a judge's chief clerk appointed an official manager of a company, and refused to adjourn the matter for the further consideration of the judge himself, and the judge himself afterwards, but without having heard all parties, declined to interfere with the appointment made by his chief clerk: the appointment was held by the court of appeal to be invalid. *Agriculturist Cattle Insurance Company*, 7 Jur. N. S. 590; 30 L. J., Ch. 619—L. J.

The mere fact of a person having once been an official manager of one company is not in itself a good ground for appointing him to a similar office for another. *Ib.* The court of appeal will not interfere with the discretion of the judge in appointing an official manager. An official manager does not exercise any legal functions. *Ib.*, S. C., 9 W. R. 910—L. J.

Resigna-
tions, re-
movals, fil-
ling up va-
cancies and
compensa-
tion (*a*).

93. Any official liquidator may resign or be removed by the court on due cause shown; and any vacancy in the office of an official liquidator appointed by the court shall be filled by the court (*b*): there shall be paid to the official liquidator such

salary or remuneration, by way of per-centage or otherwise, as the court may direct; and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the court directs.

(a) See 11 & 12 Vict. c. 45, s. 32; 12 & 13 Vict. c. 108, s. 6 and 19 & 20 Vict. c. 47, s. 88, as to remuneration of official manager and his clerks.

The per-centage was decided to attach only on the amount actually received and divided among the creditors, and not upon the sum set off by contributories. *North of England Joint Stock Banking Company*, L. J. 1851, Ch. 462.

(b) See Rule, No. 16.

94. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects and things in actions to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the court (d).

Style and duties of official liquidator(c).

(c) This section is nearly the same as the 89th section, 19 & 20 Vict. c. 47, s. 89.

(d) See sect. 203, *post*, as to unregistered companies.

95. The official liquidator shall have power, with the sanction of the court (f), to do the following things:

Powers of official liquidator (e).

To bring or defend any action, suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company (g);

To carry on the business of the company, so far as may be necessary for the beneficial winding-up of the same;

To sell the real and personal and heritable and moveable property, effects and things in action of the company by public auction or private contract, with power to transfer the whole

Part IV.—Winding up of Companies, &c.

thereof to any person or company, or to sell the same in parcels (*h*);

To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;

To prove, rank, claim and draw a dividend, in the matter of the bankruptcy or insolvency or sequestration of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency or sequestration, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors;

To draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making or indorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made or indorsed by or on behalf of such company in the course of carrying on the business thereof;

[To take out, if necessary, in his official name, letters of administration (*i*) to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any monies due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any monies due from a contributory, such monies shall for the purpose of enabling him to take out such letters

or recover such monies, be deemed to be due to the official liquidator himself] (*k*);

To do and execute all such other things as may be necessary for winding-up the affairs of the company and distributing its assets (*l*).

(*e*) This section is nearly the same as the 90th section of 19 & 20 Vict. c. 47.

(*f*) See Rules, Nos. 48—50.

(*g*) See sect. 203, as to unregistered companies.

(*h*) See Rule No. 32.

(*i*) See sect. 105, *post*.

(*k*) The paragraph in brackets is not in the 90th section, 19 & 20 Vict. c. 47.

(*l*) See sects. 159—162, *post*, powers of official managers under 11 & 12 Vict. c. 45, s. 55, 12 & 13 Vict. c. 108, ss. 8, 30; see sect. 133, pl. 10, *post*.

The court, in directing a compromise under sect. 19 of the 21 & 22 Vict. c. 60, exercised a judicial discretion, and would not direct the official liquidators to enter into a compromise without having the means of itself forming an opinion as to the propriety of the compromise. Therefore where official liquidators applied to the court to direct a compromise which had been proposed by a body of thirty-five shareholders in a company which was being wound-up, to pay among them an aggregate sum in discharge of their liabilities as shareholders, but without disclosing to the court the particulars or data of such compromise, the court refused the application. It was in the discretion of the court whether notice should be given to the creditors under the 19th section of the 21 & 22 Vict. c. 60. *Re Northumberland and Durham District Banking Company, Ex parte Totty*, 1 Drew. & Sm. 273; see sect. 160, *post*, n.

Compromise of claims by official liquidators.

96. The court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the court, and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

Discretion of official liquidator (*a*).

(*a*) 21 & 22 Vict. c. 60, s. 9.

97. The official liquidator may, with the sanction of the court, appoint a solicitor or law agent to assist him in the performance of his duties.

Appointment of solicitor to official liquidator (*b*).

(*b*) See Rule, No. 68, sect. 75 of 19 & 20 Vict. c. 47. The official manager appointed the solicitor under the Wind-

ing-up Act, 1848, and the 12 & 13 Vict. c. 108, s. 11, made provision as to remuneration.

Ordinary Powers of Court.

Collection
and applica-
tion of
assets (c).

98. As soon as may be after making an order for winding-up the company, the court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities (d).

(c) See 19 & 20 Vict. c. 47, s. 75.

(d) See Rules, Nos. 29—31, as to list of contributories.

It seems that service of notice of a meeting to settle the list of contributories of a company in process of being wound-up in bankruptcy, by sending them through the post to the addresses of the parties, which are not their registered addresses, is not good service so as to fix them as contributories in the event of their not attending. The commissioner, under the Joint Stock Companies Act, 1856, has not jurisdiction to give costs to a party who is summoned from the country as liable to be placed on the list of contributories. *Re London, Harwich and Continental Steam Packet Company (Limited)*, 30 L. T. 139, Bank.

Provision as
to represen-
tative contri-
butories (a).

99. In settling the list of contributories the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the court thinks fit (b).

(a) See 11 & 12 Vict. c. 45, s. 76.

To what
companies
the repealed
acts apply.

(b) See sect. 76, *ante*, p. 85; although the Winding-up Acts 1848 and 1849, and the Joint Stock Companies Acts, 1856—1858, are repealed by this act from the 2nd November, 1862, see sect. 205, 206, *post*, and third schedule, such acts continue applicable to companies which had been ordered to be wound-up previously to that day. The consideration of those acts and the numerous decisions thereon will therefore be a matter of frequent recurrence,

and it is hardly necessary to remark that many of the decisions on the repealed acts will be applicable to the construction of this act. The act 1848, 11 & 12 Vict. c. 45, applied to all companies corporate or unincorporate within the provisions of either of the two acts 7 & 8 Vict. c. 111, and 8 & 9 Vict. c. 98, including all companies existing on the 1st day of November, 1844, and which had obtained or should obtain a certificate of registration under the 7 & 8 Vict. c. 110, and to all companies which would have been within the provisions of either of the said two acts if they had not been dissolved or had not ceased to trade at the time of the passing thereof respectively, and to all banking companies which would have been within the provisions thereof if they had not been specially excepted from the provisions of the act 7 & 8 Vict. c. 110, and to certain railway companies which do not come within the scope of this work, and to all companies, associations and partnerships to be formed after 14th August, 1848, whereof the capital or the profits was or were divided or to be divided into shares, and such shares transferable without the express consent of all the copartners.

By stat. 11 & 12 Vict. c. 45, s. 3, all associations or companies formed for the purpose of working mines or minerals, and all benefit building societies other than such as were duly certified and enrolled under the statutes in force respecting such societies, were made liable to the operation of that act; but nothing therein contained affected the jurisdiction of the court of stannaries in Cornwall.

By 12 & 13 Vict. c. 108, notwithstanding anything in the act 11 & 12 Vict. c. 45, importing a more limited application thereof, the same was applied to all partnerships, associations and companies whereof the partners or associates were not less than seven in number, whether incorporated or unincorporated, and whether formed or subsisting before or after 14th August, 1848, or the 1st August, 1849 (except railway companies incorporated by act of parliament, to which companies such act did not apply): provided that nothing contained in the 12 & 13 Vict. c. 108, should affect the jurisdiction of the court of stannaries in Cornwall; and that nothing contained in that act, nor in any act therein referred to, should extend to any partnership, association or company formed for the working of mines on the principle commonly called the cost-book principle within the said stannaries and jurisdiction of the said court, unless the owner or owners of one-tenth in value of the shares in any such mine as should appear on the cost-book should present a petition to the Lord Chancellor or to the Master of the Rolls for the dissolution and winding-up or for the winding-up of the affairs of such company, which petition, and the parties thereto and all proceedings thereupon, were subject to the provisions of the act 12 & 13 Vict. c. 108, and the acts therein referred to.

What companies or societies within acts.

The provisions of the 19 & 20 Vict. c. 47, relating to the winding-up of companies, applied to all companies registered under that act, and to all companies registered under the act 7 & 8 Vict. c. 110, from the date at which they had obtained registration under the act 19 & 20 Vict. c. 47, in manner thereafter mentioned, but not to any other companies.

A society certified under the Industrial and Provident Societies Acts was held to be within the provisions of the Winding-up Acts, and an order for winding-up such society was made accordingly. *Re National Industrial and Provident Society*, 30 L. J., Chanc. 940; 9 W. R. 774—R.; see 25 & 26 Vict. c. 87, s. 17.

Where a company, by whose deed of settlement it was provided that on the transfer or forfeiture of the shares of its proprietors, their liability for the debts of the company should determine, had ceased to carry on business, the court made a winding-up order on the petition of several former shareholders who had been sued and been obliged to pay a large sum of money on behalf of the company, notwithstanding that it appeared that they had some time since transferred or forfeited their shares. *Re Times Fire Assurance Company*, 10 W. R. 115—R.

A benefit building society, which had been duly enrolled under the 6 & 7 Will. 4, c. 32, was held to be within the Winding-up Acts, 11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108. *Re St. George's Benefit Building Society*, 4 Drew. 154; 3 Jur. N. S. 683; 27 L. J., Ch. 96.

A banking company constituted under 7 & 8 Vict. c. 113, contracted liabilities by trading contrary to the direction of the statute 7 & 8 Vict. c. 113, s. 5, before half its capital was paid up, the company having been ordered to be wound-up: it was held, that a call might be lawfully made to provide for the liabilities so incurred. *Re London and Eastern Banking Corporation, Ex parte Longworth's Executors*, 1 Johns. 465; 5 Jur. N. S. 1389. Affirmed on appeal, 29 L. J., Chanc. 55; 6 Jur. N. S. 1. It was held also, that a contributory could not set up such illegal commencement of business to defend him from the payment. *Ib.*

Two persons, who traded in their own names as a firm, having become embarrassed, executed a deed to which they were parties of the first part, certain of their creditors as trustees of the second part, and the general body of creditors, including the trustees, who were scheduled, of the third part. The deed empowered the trustees to carry on the trade business under the name of the "Stanton Iron Company," to execute all contracts and instruments necessary for carrying it on; to divide the net income to be received among the creditors in rateable proportions, such income to be deemed the property of the two partners, with power for the majority of the creditors assembled at a meeting to make rules for con-

ducting the business or to determine it altogether, and after the discharge of the debts the property was to be retransferred by the trustees to the two partners. One of the two creditors who were named trustees never acted; the other acted six weeks and then resigned. Some time afterwards the other trustees, who continued to carry on the business, being indebted to a third party, gave him bills of exchange accepted by themselves, *per proc.* "The Stanton Iron Company:" it was held, that no partnership was created by the deed, and consequently that the two trustees who had ceased to act could not be sued as partners in the company, nor for goods sold and delivered, there being no distinction upon the question of liability between the bills and the consideration for which they were given, and that the company was not within the Winding-up Acts 11 & 12 Vict. c. 45, 12 & 13 Vict. c. 108. *Re Stanton Iron Company*, 21 Beav. 164; 2 Jur. N. S. 130; 23 L. J., Ch. 142; *Cox v. Hickman*, 8 H. L. C. 268.

It was decided that a cost-book mining company, subject to the jurisdiction of the stannary court of Devon, could be wound-up in chancery, notwithstanding the one-tenth in value of the shares in the company was not held by the petitioners. *South Lady Bertha Mining Copper Company*, 2 Johns. & H. 376. Such company not being within the exemption in the above acts, and although the jurisdiction of the stannary court had been extended by 18 & 19 Vict. c. 32, to Devonshire. See *ante*, p. 115.

Leave might be obtained, *ex parte*, to present a petition for winding-up a mining company, subject to the jurisdiction of the stannaries, and it was unnecessary to state in the petition that such leave had been obtained and communicated to the respondent. *Ib.* A creditor of the company was not entitled to oppose the petition, although his rights were thereby seriously affected. *Trefoil and Messer Mining Company*, 2 Johns. & H. 421.

The directors of a company transferred all its assets, liabilities and business to another company under a deed of amalgamation, by which it was provided that the shareholders in the old company should exchange their shares for shares in the new company, and that the new company should indemnify the old company in respect of all its debts and liabilities. Some only of the shareholders in the old company executed the deed of amalgamation and became shareholders in the new company. The new company disputed their liability to carry out the arrangement for the amalgamation, and did not pay the debts of the old company and actions were brought against the old company. The new company subsequently assigned their business, but not their assets, to another company. Upon a petition for the winding-up of the old company, presented by a shareholder in the new company, who had originally been a shareholder in the old company,

On amalgamation of companies.

and which was supported by the shareholders of the old company who had executed the deed of amalgamation, but opposed by those who had not: the court refused to order the old company to be wound-up, and dismissed the petition with costs as against those shareholders who had been served, but without costs as against those shareholders who had voluntarily appeared. *Re Anglo Australian and Universal Family Life Assurance Company, Ex parte Smith and re British Provident Life and Fire Assurance Society, Ex parte Collins*, 1 Drew. & Sm. 113.

Parties entitled to apply.

Company A. amalgamated with company B., but some of the shareholders of company A. did not concur in such proceedings. A bill was filed for specific performance of such amalgamation, and suits being instituted by creditors against company A., a shareholder who had come in and exchanged his shares under such amalgamation, petitioned for a winding-up of company A. Such petition was dismissed with costs. *Re Anglo Australian and Universal Family Life Assurance Company, Ex parte Smith, Re British Provident Life and Fire Assurance Society, Ex parte Collins*, 8 W. R. 170, V. C. K. A shareholder in company B., who had become such under the amalgamation, also petitioned to wind-up, having given notice to another company, who had contracted to purchase company B., not to pay the purchase-money. The petition was ordered to stand over, with liberty to any person to apply. *Ib.* The fact that suits had been instituted against a company is not evidence *per se* of the insolvency of the company. *Ib.*

Although an amalgamation and purchase of the business and liabilities of one joint stock company by another, established for similar purposes, may exceed their power as a transaction not within the general scope and purpose of the business of such a company, and unauthorized by the deed of settlement, there may have been such an amount of subsequent acquiescence as to render the attempted amalgamation, though invalid in its inception, binding as between the two companies. *Re Era Assurance Society, Williams's Case, Anchor Company's Case*, 11 W. R. 204; 2 Johns. & H. 400.

Winding-up abroad.

Three partners formed a firm, which carried on business at Hayti, one of whom lived and died in England, one was living at Hayti, and the third lived and died at Hayti. The plaintiff had obtained administration of the effects of the third in England, and filed a bill against the partner living at Hayti and the representative of the one who died in England to have the firm at Hayti wound-up. After the bill had been filed here the party living at Hayti took proceedings in the court there to wind-up the firm. There had been dealings between the firm at Hayti and a firm in England; the two first named were partners. There was no allegation that the representatives of the party who had died at Hayti would be bound by the proceedings there, his assets being in England.

The court made a decree for winding-up the firm at Hayti. *Maunder v. Lloyd*, 11 W. R. 141, V. C. W.

The 74th to the 78th sections of this act, *ante*, pp. 76—97, define the meaning of the word “contributory,” the nature of the liability of a contributory, contributories in case of death and in case of bankruptcy, and in the case of marriage. It is now to be considered under what circumstances persons are liable to be placed upon the list of contributories. Who to be placed on list of contributories.

The word “contributory” includes every member of a company, and also every other person liable to contribute to the payment of any of the debts, liabilities or losses thereof, whether as heir, devisee, executor or administrator of a deceased member, or as a former member of the same, or as heir, devisee, executor or administrator of a former member of the same deceased, or otherwise howsoever. 11 & 12 Vict. c. 45, s. 3. The word “member,” in the same act, means any person entitled to a share of the assets or accruing profits of the company at the time of presenting the petition for dissolving the same or winding-up the affairs thereof under that act. *Ib.* The word “contributory” is to include *alleged* contributories with respect to the attendance of proceedings before the master (now the judge at chambers), and to the representation of parties and other matters. 12 & 13 Vict. c. 108, s. 9. Definition of “contributory.”

Under the class of members of the company will be comprised not only those who have executed the deed, *Hutt v. Giles*, 12 Mee. & W. 492, or other instrument constituting the company, but also those who, although they have not executed the deed, have yet become virtually members by acting in such a manner as to induce the company to consider them as members. *Clements v. Todd*, 1 Exch. 268; *Maguire's Case*, 13 Jur. 673; *Cheltenham and Great Western Railway Company v. Daniel*, 2 Q. B. 281; *London Grand Junction Railway Company v. Graham*, 1 Q. B. 271. A person is liable as a contributory who has entered into an agreement for the purchase of shares in a company, which has been approved of by the company, and a specific performance of which agreement could have been enforced against him. *Sanderson's Case*, 3 De G. & S. 66; 21 L. J. Ch. 122; 14 Jur. 8; see *Walter's Case*, 3 De G. & S. 149.

In deciding whether a party is or is not a contributory within the meaning of the Joint Stock Companies Winding-up Acts, the point to be ascertained is whether he is liable in any manner whatsoever to contribute to the debts, liabilities and losses of the company, and it is not necessary that he should be a member of the company according to the strict provisions of the deed of settlement. *Straffon's Executor's Case*, 1 De G., M. & G. 576; 16 Jur. 435. If directors, not following the formalities prescribed by the deed of settlement, adopt in respect of a particular transaction, and for the

purpose of constituting shareholders, a new rule of proceeding, and a party treats himself and is treated by the directors as a shareholder by virtue of such a transaction, it is not competent either to the party or the directors subsequently to repudiate the transaction, on the ground of the non-compliance with the formalities required by the deed of settlement. *Ib.* A. B. became the owner of shares in a joint stock company by transfer from former holders, and treated himself and was treated by the directors as a shareholder. All the formalities of the deed of settlement were not however observed in the transaction: it was held, nevertheless, that every matter of substance having been complied with, the executors of A. B. were properly placed on the list of contributories in respect of the shares, on the winding-up of the company. *Ib.*

Contributories, so far at least as regards allottees of shares and provisional committee-men, are those only who have contracted by themselves or agents with a creditor, or who have agreed to indemnify or repay, in part or in all, those who have contracted with the creditor on their own account. All the questions of contributories resolve themselves into two questions of fact: first, by far the most frequent occurrence, did the alleged contributory make, or authorize to be made, the contract in respect of which he is called on to contribute, on his account, jointly with others? or, secondly, if any one or more entered into the contract, did he agree to indemnify the person or persons contracting in part or in all against the consequences of that contract? *Per Parke, B., Bright v. Hutton*, 3 H. L. C. 369.

An allottee of shares not a contributory.

No one is liable to be put on the list of contributories under the Winding-up Acts merely by reason of his having agreed to take, or, which is the same thing, having become an allottee of shares, whether he has or has not paid a deposit. *Carrick's Case*, 1 Sim. N. S. 510.

A. wrote a letter of application for shares in a railway company which was provisionally registered, and received an answer in the usual form, declaring that certain shares had been allotted to him, on which he was required to pay a deposit. A. paid the required deposit, but neither signed the subscribers' agreement nor the parliamentary contract. The scheme having been abandoned: it was held, that A. did not, by his letter of application for shares and by paying the deposits thereon, become a "member" of the company, or a "contributory" within the meaning of the Joint Stock Companies Winding-up Acts, 1848 and 1849. He merely bound himself to take such shares as he had applied for, should the company ever be in fact established. It was held therefore that his name had been rightly ordered to be expunged from the list of contributories. *Hutton v. Thompson*, 3 H. L. C. 161.

A. applied by letter to the committee of a provisionally

registered railway company for fifty shares in the undertaking, and thereby undertook to accept them or any less number that might be allotted to him, and to pay the deposits thereon, and to sign the parliamentary contract and subscribers' agreement when required. The committee allotted him thirty shares, but he did not pay the deposits thereon or do any other act in pursuance of his undertaking. The project proved abortive, and the affairs of the company were ordered to be wound up: it was held, that A. was not liable as a contributory even to the extent of the deposits. *Ex parte Capper*, 1 Sim. N. S. 178; 15 Jur. 145; 20 L. J. Ch. 148.

An allottee of shares in a company, where the number of subscribers to the scheme proved insufficient to raise the necessary capital and which turned out to be impracticable, is not a contributory. *Ex parte Maudslay*, 6 Railw. C: 350.

An allottee, who in an action at law has recovered back his deposit, is not liable as a contributory in respect of the shares the subject of such action. *Walstab's Case*, L. J. 1851, Ch 58.

A., an allottee of shares in a projected railway company which failed to obtain an act, paid his deposit but never executed any deed. Accompanying the letter of allotment was a circular from the directors, undertaking to return the deposits if an act should not be obtained. Afterwards A., at the request of the directors, asking for the continuance of the confidence of the shareholders, wrote to the board requesting them to continue the undertaking. On the breaking up of the company the directors returned the balance of the deposits remaining in their hands, and paid to A. on that account 200*l.* A. recovered in an action against one of the managing directors the remaining 200*l.*: it was held, that A. was not a contributory. *Ex parte Beardshaw*, 1 Drew. 226; 16 Jur. 1108.

Where a number of shares are offered to parties and they accept only part of them, and sign the subscription deed and parliamentary contract in respect of such limited number, their liability will extend only to the shares in respect of which they have so signed. A. B. and C. D. were members of the managing committee of a provisionally registered railway company, and as such had allotted to them and accepted 100 shares in the company. At a meeting of the managing committee an instruction was given for the allotment of shares according to a scheme by which 500 shares were reserved to each member of the managing committee. A report was made by the secretary of the company at a subsequent meeting, at which A. B. and C. D. were both present, that shares had been allotted according to the scheme, but no further evidence appeared of allotment of shares to, or acceptance of shares by, the members of the committee. A. B. and C. D. subsequently executed the parliamentary contracts in respect of 100 shares only: it was held, on the winding-up

of the company, that the liability of A. B. and C. D. as contributories was limited to the 100 shares, and was not affected by the proposed reservation of the 500 shares. *Sharp and James's Case*, 1 De G., M. & G. 565; 16 Jur. 579; 21 L. J. Ch. 767.

It was decided not to be sufficient ground for excluding an allottee from the list of contributories to a provisionally registered railway company, that the prospectus of the company contained incorrect and fraudulent statements, in reliance on which he applied for shares; or that the project was never carried into effect, unless it appear that the only other persons interested in the company were the parties who made the fraudulent statements. *Ex parte Parbury*, 2 De G. & S. 43; 13 Jur. 725; see *Ex parte Sharpus*, 3 De G. & S. 49; 13 Jur. 723; *Morgan's Case*, 1 De G. & S. 774; 1 Hall & T. 320; see *Brockwell's Case*, 4 Drew. 214; *Nichol's Case*, 5 Jur. N. S. 207.

The proper test to apply in considering whether a party should be retained on the list of contributories is not, whether he would be liable to the creditors of the bank if sued by them, but whether, having regard to the rights of the shareholders *inter se*, he ought to be on the list. A party may be liable at law to the creditors of the company, and yet should not be placed on the list of contributories; and, *vice versa*, a party may not be liable at law to the creditors of the company, and yet ought to be placed on the list. Although a director is not the agent of the shareholders to commit a fraud, if the shareholders adopt and seek to enforce a contract entered into by him as their authorized agent, they cannot repudiate a fraud committed by him which led to the contract and was immediately connected with it; *Ex parte Ginger, Re Tipperary Joint Stock Bank*, 5 Ir. Eq. R., N. S. 174.

Who are
liable as con-
tributories
generally.

In 1835 a company was formed for working mines in South America. There was no deed of settlement, and the shares were transferable by delivery. On the 24th November, 1857, an order was made to wind-up the company. On the 18th A. purchased eighty shares in the company, and on the 23rd he purchased 325 other shares. The certificates for 300 of these shares were handed to A. before the date of the order for winding-up the company, and the certificates for the remaining 105 shares were handed to A. afterwards: it was held, that as A. was, at the date of the winding-up order, legal and equitable owner of 300, and equitable owner of the remaining 105 shares, his legal title to which shares was afterwards completed, he was liable as a contributory in respect of the whole 405 shares. *Re Mexican and South American Company, Ex parte Grisewood*, 5 Jur. N. S. 1191; 28 L. J., Ch. 769; 7 W. R. 681.

A purchaser of shares in such a company must, in the absence of express contract to the contrary, be taken to have

bought them subject to the debts of the company existing at the date of the purchase. *Ib.*

Where shares in a scrip company passed by mere delivery: Principals
it was held, that London bankers who had in their hands at and agents.
the date of the winding-up order shares belonging to foreign
correspondents, on which they had received the dividends,
were not contributories. *Ex parte Finlay, Re Mexican and South
American Mining Company*, 26 Beav. 182; 4 Jur. N. S. 1030;
27 L. J., Ch. 664.

The single circumstance that a party attended the board
meetings of the directors of a company, and seconded a reso-
lution as to the qualification of directors, is insufficient to con-
stitute him a shareholder. In order to fix him as a con-
tributory, it must be shown that he has accepted shares or
done something equivalent to an acceptance. *Re Little Down
and Ebber Rocks Mineral and Mining Company*, 3 L. T., N. S.
483, Holroyd, Com.

Where it was stated in an agreement made between a com-
pany and C., that in consideration of 3,100*l.* advanced by C.
to the company as the amount of monies unpaid upon 3,100
shares, and exclusively held by C., beyond the sums actually
called for in respect of such shares, the company undertook
to pay interest at eight per cent. upon the amount, with a
proviso that such interest should cease upon so much of the
sum as should from time to time become payable in respect
of calls, from the time of such calls becoming payable; and
that in case the company was dissolved or wound-up, so much
of the 3,100*l.* as should not have been called up should be a
debt due from the company and repaid to C. or his assigns of
the shares: it was held, that there was sufficient *prima facie*
evidence to show an acceptance of shares by C. to fix him
as a contributory. *Ib.*

A party who has bought shares on the Stock Exchange,
received dividends and paid calls, is precluded on the wind-
ing-up of the company from raising a question as to the
illegality of the issue of shares. *Re Mexican and South
American Company, Ex parte Barclay*, 4 Jur. N. S. 1042; 27
L. J., Ch. 660.

Individual members of an insurance company (registered
under the 7 & 8 Vict. c. 110), which by its policies has pro-
vided that the capital stock and other the property of the
company remaining at the time of any claim undisposed of
and inapplicable to prior claims, shall alone be liable to make
good all claims thereunder, and that no shareholder shall be
individually liable to any such claim beyond the amount un-
paid of his shares in the capital stock, are not liable under
the Winding-up Acts to calls in respect of the amount for
which judgment has been recovered upon any policy, beyond
the amount unpaid of their shares, notwithstanding the com-
pany had assets when the claim was made under the policy.

Re Athenæum Society and Prince of Wales Life Assurance Society, 1 Johns. 80; 5 Jur. N. S. 383; affirmed on appeal, 5 Jur. N. S. 558; 28 L. J., Ch. 335, L. J.

Calls on
appeal.

It seems that an order for a call made in chambers is, for the purpose of appeal to the court, under the 11 & 12 Vict. c. 45, s. 99, to be treated as an order of the master. *Ex parte Longworth's Executors*, 1 Johns. 461; 29 L. J., Ch. 55; 7 W. R. 628.

Extent of
liability of
contribu-
tories.

A person who buys shares in a trading company is to be taken to have bought them subject to their existing liabilities, and on the winding-up of the company is liable to contribute as well towards debts incurred before as those incurred after the purchase. *Grisewood and Smith's Cases*, 4 De G. & J. 544.

Two persons bought shares in a company whose shares passed by delivery of the certificates. Some of the certificates were not delivered until after an order for winding-up the company had been made: it was held that such persons were contributories in respect of these shares as well as in respect of those the certificates of which had been delivered before the winding-up order. *Ib.*

Degrees of
liability
amongst con-
tributories.

When the list of contributories has been settled distribution is to be made of the proportions in which the contributories are liable amongst themselves. If a company has incurred great loss and expense by improper management or by the directors assuming powers which they never possessed, such members as have not sanctioned those proceedings are not liable to the losses occasioned by the directors, and the contribution is to be settled according to the degrees of liability properly ascertained. *Ex parte Earl of Mansfield*, 1 Hall & T. 596; 2 M. & G. 67. The liability of a trustee as a contributory will not be limited to the extent of the trust estate. A transferee of shares having taken upon himself the character of owner cannot rely upon any irregularities in the transfer to escape liability, whether the shares belong to him beneficially or as a trustee; *Re the Phoenix Life Assurance Company, Hoare's Case*, 31 L. J., Ch. 504.

An order under a petition to wind-up a company made by arrangement between the official liquidators and the petitioners does not bind the other contributories. *Re Anglo Californian Gold Mining Company*, 10 W. R. 127, V.-C. K. Contributories of a company, although no parties to a winding-up order, in the sense that they are neither petitioners nor respondents, are parties in the sense that they are bound by it. *Ib.*

The prospectus of a cost-book mining company stated the proposed capital at 30,000*l.* Upon application shares were allotted to a party, and the certificate mentioned rules and regulations under which the shares were to be held. One of the rules was that the company should be associated when

one-third of the capital should be subscribed. The applicant did not thereon refuse the shares: the court decided that he was rightly placed on the list of contributories, though there was no evidence of one-third of the capital having been paid. *Hawkins, Ex parte*, 2 K. & J. 253; 2 Jur. N. S. 85; 25 L. J., Ch. 221.

On an application by an official manager of a company ordered to be wound-up, the court refused to put on the list of contributories or to declare liable to contribute to the debts of the company a provisional director and allottee of shares who had attended meetings and taken part in the proceedings but had never signed the subscription contract. *Hereford and Merthyr Tydvil Junction Railway Company (Maitland's Case)*, 3 Giff. 28.

Allottees of shares are not members, they have no right on the aggregate fund formed by the deposits, their right on the abandonment of a scheme is a personal right against the parties who have contracted with them, that in consideration of the deposit they shall become shareholders in the company about to be formed. Upon the abandonment of the project the allottee's right is not on a specific fund but a personal right of action, independent of the existence of any fund out of which payment can be made. An allottee is not to be placed on the list of contributories merely because he may be entitled to receive back his deposit. *Re Great North of England Railway Company, Ex parte Caruch*, 20 L. J., Ch. 670.

In order to render shareholders in a company liable as contributories, it is not essential that they should be correctly described in the company's register of shareholders. *Yelland's Case*, 5 De G. & S. 395. The company's deed required all transfers of shares to be made in a prescribed manner, with the consent of the directors, and the transferee to execute the deed, who was precluded from the privileges of a shareholder until he had executed the company's deed. Shares were transferred to a purchaser and certificates of shares were delivered and dividends paid to him, but the shares were not transferred in the mode prescribed in the deed executed by the purchaser. The executors of the purchaser were placed on the list of contributories, as enough had been done by both parties to make the purchaser virtually although not formally a shareholder. *Straffon's Executor's Case*, 1 De G., M. & G. 576; 4 De G. & S. 256.

A person in 1844 bought shares in a banking company and had them transferred to him. The company afterwards registered under 20 & 21 Vict. c. 49, so as to come within the Winding-up Act, 1856. He was never entered on the list of shareholders under that act but had received dividends, and after his death his executors received dividends and then sold the shares: it was held, that as he would have been a contributory under the old acts, so the executors were contribu-

tories. *Re Northumberland District Banking Company, Ex parte Dixon's Executors*, 1 Drew. & Sm. 225.

A director of a railway company for which a winding-up order had been made claimed against the company. The claim was disallowed by the master. Some years after the director's death his executors discovered letters which had not been brought before the master, and which they alleged proved his right. These letters were in the possession of the director at the time he made his claim: it was held, that as the evidence was known to the director who had not brought it forward, it could not be made use of by his executors. *Re Warwick and Worcester Railway Company, Ex parte Kelly's Executors*, 9 W. R. 329, V.-C. K.

So a transferee of shares who had availed himself of the privileges of a company on several occasions and signed a ticket, wherein he was described as a proprietor, was held to be liable as a contributory, although no instrument of transfer had been signed by him and his name was not on the list of shareholders returned to the joint stock registrar. *Maguire's Case*, 3 De G. & S. 31.

The purchaser of fifty shares of the executors of the late owner had them transferred to him, received certificates of shares from the company, and was registered as a shareholder in respect of the fifty, of which five only had been transferred conformably to the company's deed of settlement: notwithstanding such irregularity, the purchaser was held to be a contributory in respect of the whole fifty, although the bank stopped payment soon after the transfer had been made. *Sanderson's Case*, 3 De G. & S. 66; 3 H. L. Ca. 698; see *Gordon's Case*, 2 Jur. N. S. 1203; 3 De G. & S. 249.

Free shares.

The mere allotment by the directors of shares to a person as a consideration of a secret imparted by him to the company, will not exempt him from being placed upon the list of contributories upon the company being wound-up. *Brooke's Case*, 33 L. T., 307, Bank.

Where shares were issued by a joint stock company as fully "paid-up" in lieu of payment for the purchase of certain mines, for the working of which the company was established, it was held that such purchase was a sufficient consideration, and the company was estopped from questioning the validity of those shares. And that the holders of those paid-up shares could not be called upon to contribute to the debts of the company under a winding-up order. *Re the Cardiff and Caerphilly Iron Company (Greenhill's Case)*, 4 L. T., N. S. 452, Bank.

Secret agreement.

Provisional directors entered into an agreement to give to the projector of the company 2,500*l.* in money, and 2,500*l.* in paid-up shares. The agreement did not appear in the deed of settlement which the projector had executed for 350 of

those shares: it was held that the company were not bound by the agreement, and although they repudiated it, still that he was liable unconditionally as a contributory in respect of the 350 shares. *Re Cosmopolitan Life Assurance Company (Nicholl's Case)*, 24 Beav. 639.

A party who has applied for shares in a company and paid the preliminary deposit thereon and also the amount of a call made in respect of such shares and done other acts of membership, is a contributory, notwithstanding the form of acceptance of the shares received from the company though signed by him has not been returned to the company. *Re National Deodorising and Manure Company (Rowland's Case)*, 31 L. T., 239, Bank. Acceptance of shares.

A party who applies for shares and says, "which I hereby accept," and pays the deposit, if he writes, before the allotment is made, saying he withdraws, and desires to cancel his application, is not a contributory. *Ex parte Graham, Re the Cardiff and Caerphilly Iron Company (Gledhill's Case)*, 30 L. J., 861, Ch.; on appeal, 7 Jur. N. S. 981.

A. gave to B. a cheque for 50*l.* to obtain fifty shares in a company. B. applied for fifty shares, and they were allotted to A., and his name was entered in the books, &c. as a shareholder. It did not appear that anything more had been done than that A. had refused to sign the deed: it was held, that not having repudiated the shares he was a contributory, and that a change in the company's books in the number of the shares first allotted to B. did not relieve him from his liability. *The Electric Telegraph Company of Ireland (Cookney's Case)*, 26 Beav. 6. Taking shares, but refusing to sign deed.

Shares in a company which was in the course of formation were allotted to an applicant, whose application was merely a verbal request to a director to obtain the shares, but who subsequently paid the deposit. On being requested to execute the deed of settlement the allottee refused to do so. The company afterwards obtained an act of parliament, and in the register of shareholders made under the act the name of the allottee, omitting his first christian name, was inserted in the register as a shareholder in respect of the same number as had been allotted to him, but which were differently numbered—numbers corresponding to those in the allotment being ascribed in the new register to another shareholder: it was held, that no written agreement to take shares was necessary, but that he had become liable as a contributory and was not relieved from the liability, either by his refusal to execute the deed, by the change in the number of shares ascribed to him or by the mistake in his name; *Ex parte Cookney*, 3 De G. & J. 170; 5 Jur. N. S. 77; 28 L. J., Chan. 12; 7 W. R. 22; 32 L. T. 82, affirmed on appeal; 26 Beav. 6.

W. applied in writing for shares in a company constituted under 19 & 20 Vict. c. 47, subject to a condition that he

should have the supplying of certain articles required by the company. Shares were allotted to him, but the company never having come to any definite arrangement as to his supplying them with the articles mentioned in the conditions, he neither signed the articles of association, paid any deposit, nor did any act amounting to an unqualified acceptance of the shares. The company being afterwards wound-up under the 19 & 20 Vict. c. 47: it was held, that W.'s name ought not to be placed on the list of contributories. *Re Sunken Vessels Recovery Company, Ex parte Wood*, 3 De G. & J. 85; 5 Jur. N. S. 1377; 28 L. J. Chan. 899; see *New Brunswick and Canada Railway and Land Company*, 4 H. & N. 580; 5 Jur. N. S. 1131.

The deed of settlement of a banking company provided, that shares might be transferred with the consent of the directors, but that the transfers should be registered, and that an indorsement of the registry should be made on the deed of transfer, and should be sufficient evidence of the directors' consent. A shareholder placed his shares in the hands of a broker, and they were sold nominally to the solicitor of the company, but really (though without the knowledge of the shareholders) to the company itself, the purchase money having been paid out of the company's funds, and the subsequent dividends being carried to their credit: it was held, that although there was no indorsement on the transfer to the solicitor the directors' consent was sufficiently proved, and that on the company being wound-up the vendor ought not to be placed on the list of contributories as a shareholder. *Nicol's Case, Re Royal British Bank*, 3 De G. & J. 387.

Persons who were induced by fraud and misrepresentation to become shareholders of a company, which was virtually insolvent, and to sign the deed of settlement of such company, which was afterwards wound-up, were held not to be liable as contributories. *Re Universal Provident Life Assurance, Ex parte Bell*, 2 Jur. N. S. 344.

Non-signature, but payment.

In January, 1854, P. applied for shares in the Amazon Life Assurance and Loan Company and Sick Benefit Society. In answer to his application, shares were allotted to him in the Amazon Life Assurance and Loan Company, upon which he paid a deposit of 25*l.* but did not execute the company's deed. Subsequently an order was made for winding-up the Amazon Life Assurance and Loan Company, and P.'s name was put upon the list of contributories. Upon a motion to reverse the decision of the master: it was held, that the master had arrived at a just conclusion, and that this case was governed by the decision of the Lords Justices in *Blackburn's Case*, 8 De G., M. & G. 177; see *post*, p. 142; *The Amazon Life Assurance and Loan Company, Ex parte Pickles*, 27 L. T. 195, Ch.

A shareholder by the receipt of dividends upon his shares will become liable as a contributory to a joint stock company

registered under the act 7 & 8 Vict. c. 110, notwithstanding the company's deed when he executed it contained a false skin, fraudulently inserted by some of the directors, purporting to limit by the custom of the company the shares passed by mere delivery of the certificates, and the affairs of the company were wholly managed by the board of directors. After several years the company was ordered to be wound-up by an order dated 24th November, 1857. Messrs. G. & S. purchased shares a few days before the date of the winding-up order, and the scrip certificates of some of them were thereupon delivered to them, and the remaining scrip certificates after the date of the order. Messrs. De P., being the holders of shares, and being aware of the failing state of the company and desiring to get rid of the responsibility, sold the scrip certificates absolutely and unconditionally for a nominal price to one of their clerks a few days before the order for winding-up was made. The names of Messrs. G. & S. and of Messrs. De P. were placed upon the list of contributories. Upon appeal, it was held that Messrs. G. & S. were liable in respect of all their shares, whether the certificates were delivered before or after the date of the order for winding-up, but that Messrs. De P. were not, because the sale by them was valid; wherefore the former would remain upon but the latter would be removed from the list of contributories. The holders of shares bought in open market, although they may have been fraudulently issued by the directors, cannot on that ground claim relief against the other shareholders, whatever may be their rights and remedies against the directors. Every person purchasing shares in such a company as that described above takes them subject to the liabilities of the company at the time of the purchase. *Ex parte Grisewood, Re the Mexican and South American Company*, 28 L. J., Ch. 769; 5 Jur. N. S. 1191; on appeal, 4 De G. & J. 544.

A. having agreed to become one of the medical referees of an insurance company, on the understanding that there would only be two of them, the secretary of the company called upon him, produced the deed of settlement, and induced him to execute it for 200 shares, representing that on his doing so he would be appointed one of the medical referees, of whom there would only be two; that the business would be equally divided between them, that the directors would not consent to his appointment unless he took 200 shares, and that all the office bearers were required to take and had taken that number. Soon after this A. discovered that four medical referees had been named, he thereupon claimed to be released from his shares and demanded a return of his calls. He afterwards discovered that most of the office bearers had never taken 200 shares: it was held, that whatever breach of contract there might have been on the part of the company towards A., there was nothing in the

Fraud and misrepresentation of directors.

circumstances to entitle him to be discharged from his liabilities as a shareholder. *Re Home Counties and General Life Assurance Company, Wollaston's Case*, 4 De G. & J. 437. Persons were held to be liable as contributories who were induced to become shareholders in a company under the representation, not fraudulent, that two persons of credit would join the undertaking, which they never did, and who, trusting to such representation without inquiry, executed the deed. *Re Hull and London Life and Fire Insurance Company, Ex parte Gibson*, 2 De G. & J. 275; 4 Jur. N. S. 1005. A person also who purchased shares in a company from a shareholder, upon the faith of a report issued by the directors, which to their knowledge was false, was nevertheless held liable to be placed on the list of contributories. *Re Liverpool Borough Bank*, 4 Jur. N. S. 1068.

Where by false representations of the directors of a company a stranger is induced to take shares directly from the company, the transaction is not binding in equity, and he is not a contributory. But if by such representations of the directors he takes them from a third party, he is a contributory. *Duranty's Case, Re the Liverpool Borough Bank*, 26 Beav. 268.

A person is not liable as a contributory who takes shares in consequence of the reports of the directors of a company, which grossly misrepresented the state of the company, and which got into circulation, upon faith in which the shares were taken. *Brockwell's Case*, 4 Drew. 205; 3 Jur. N. S. 879; 26 L. J., Ch. 855.

A vendor had been induced to take the shares by false and fraudulent representations as to the position of the company. These representations were partly made by one of the directors, and were partly contained in a report which was made by the directors to the company and approved at an annual meeting, and afterwards embodied in a circular issued by the directors inviting subscriptions for new shares: it was held, that the company could not be considered to have authorized such a use of the report, nor to be answerable for the misrepresentations contained in it; and that, whether they could or not, the vendor having had the means of discovering the fraud, and having taken no steps to repudiate the contract before the winding-up of the company, but having received dividends on and made a transfer of the shares, was not entitled to be relieved from the contract, but must be held to have been a shareholder down to the time of the transfer. *Nichol's Case*, 3 De G. & J. 387.

Fraud and
misrepresentation.

A. having been informed by the secretary of a life insurance company that no more than two medical referees of the company would be appointed, agreed, in consideration of his being appointed one of such referees, to take 200 shares therein, and he signed the deed of settlement in respect of those shares and

paid a deposit thereon. It afterwards appeared that four medical referees were appointed, of whom A. was one. A. thereupon resigned his office of medical referee, and demanded back his deposit: it was held, affirming the decision of Kindersley, V. C., 5 Jur. N. S. 617, that there had been no such misrepresentation as to exonerate A. from being a contributory in respect of the 200 shares. *Re Home Counties and General Life Insurance Company, Ex parte Wollaston*, 5 Jur. N. S. 853, L. J. A transferee of shares in a banking company, the directors of which had made fraudulent representations, is not therefore to be removed from the list of contributories when he had not been induced to accept the transfer by the fraudulent representations. *Ex parte Bigge*, 5 Jur. N. S. 617; 28 L. J., Ch. 50; 7 W. R. 30, V. C. K. Receipts of dividends upon his shares held to render the shareholder liable as a contributory to a company registered under the 7 & 8 Vict. c. 110, notwithstanding the company's deed, when executed, contained a false skin (fraudulently inserted by one of the directors) purporting to limit the liability of shareholders to the amount of their shares, upon the ground that it is the duty of every shareholder in such company to acquaint himself with the provisions of the deed as registered. *Ex parte Sheffield, Re Athenæum Life Assurance Society*, 1 Johns. 451; 5 Jur. N. S. 216; 28 L. J., Ch. 325; 7 W. R. 214. Where, by false representations of the directors of a company, a stranger is induced to take shares directly from the company, the transaction is not binding in equity, and he is not a contributory; but if, on such representations of the directors, he takes them from a third party, he is a contributory. *Ex parte Duranty, Re Liverpool Borough Bank*, 26 Beav. 268. Directors, with the approbation of a general meeting of the company, reissued certain shares, purporting to be shares entitled to preference interest, some of which shares were taken by A., and by him sold to B. as preference shares. The directors, however, had no power to issue such preference shares: it was held, nevertheless, that B. was a contributory. *Ex parte Worth*, 4 Drew. 259; 5 Jur. N. S. 504; 28 L. J., Ch. 589; 7 W. R. 281. Where directors, in the discharge of their duty, make a report to a general meeting of the shareholders containing misrepresentations, and a third person, relying on those misrepresentations, deals with the company by taking shares direct from the company, those representations vitiate the whole transaction; but where a third person, relying on such misrepresentations, takes shares not from the company, but from a shareholder in the company, the transaction is not vitiated, and the third person is liable as a contributory in respect of the shares he has so taken. *Ib.* Where a person takes shares in a company through false representations, he will not be placed on the list of contributories if the misrepresentations

were made by the company, but he will if they were made by a third person. *Ex parte Ayres*, 25 Beav. 513. A public company in such a case is not bound by the misrepresentation made by its manager or secretary without its sanction, who cannot be considered its agents to commit a fraud; but the company will be answerable for misrepresentations made in a report of the directors sanctioned by a general meeting. *Ib.* In an action for calls by a company against a shareholder, he pleaded fraud, but the company obtained a verdict. The company having afterwards been ordered to be wound-up: it was held, that the verdict did not prevent the shareholder insisting that he was not a contributory, he having been induced to take the shares through the fraudulent misrepresentations of the company. Having proved his case, the court, notwithstanding the verdict, refused to place him on the list of contributories. *Ib.* A person was induced to take shares in a company (insolvent at the time) by the false statements contained in the report of the directors, and the erroneous accounts submitted by them to the general meeting. Having discovered the company to be insolvent, he repudiated the shares: it was held, that he was a contributory. *Ib.*

D. took shares in a joint stock company upon the faith as was alleged of M. being a director, and M. admitted that he consented to become a director conditionally, if all the shares were taken up. It appeared that M. had attended the board meeting as and was regarded by the other directors as a director: it was held, that there was no misrepresentation on the part of the directors in publishing M.'s name as a director, notwithstanding his subsequent disclaimer when applied to by D., and that D. was rightly placed upon the list of contributories. *Re the London and Birmingham Iron and Hardware Company (Limited)*, 32 L. T. 180, Bank.

The holder of a large number of shares in a joint stock company, for which he had executed the deed, transferred them in consideration of a small sum of money to his bailiff, a man without property, and who earned wages of a guinea a week. The consideration money was not paid. The company was ordered to be wound-up, and the name of the transferee was placed upon the list of contributories; but upon appeal the name was ordered to be removed, and the original holder of the shares to be placed thereon, upon the ground that the transaction was merely colorable. *Ex parte Budd, Re the Electric Telegraph Company of Ireland*, 31 L. J., Chanc. 4; 30 Beav. 148; 10 W. R. 51.

Misrepresentations by directors.

A. B. became a shareholder and director of a company, on the representation of one of the directors that it was in a flourishing condition, whereas it was on the verge of insolvency: it was held, that the misrepresentation did not relieve A. B. from being a contributory. *Holt's Case*, 22 Beav. 48.

Where after the objects of a company have totally failed, and it is insolvent and practically at an end, other persons are induced to join the concern, and even sign the deed, by misrepresentation made by the directors as to the flourishing state of the concern, they are not liable to be made contributories. The result would be different where the misrepresentations are made by the proprietors on the original constitution of the company, and the question of contribution arises between a number of innocent shareholders. *Bell's Case*, 22 Beav. 35; 26 L. J., Ch. 137.

The mere circumstance of difficulties existing in a company where the shares are transferable by delivery does not prevent the holder of such shares from making a *bonâ fide* and effectual sale of them. Where the contract between the parties is that each may transfer his shares, any one partner can have no right to complain of another partner for making a transfer at a time when the company may happen to be involved in difficulties. *De Pass*, 1 De G., F. & J. 75; *Ex parte Hyam*, 4 De G. & J. 544.

Transfer of shares in order to avoid liability.

P. held 250 shares in a company, for which he had paid 1,750*l.* A few days before the winding-up order, he, being aware that the company was in difficulties, handed over the certificates to a clerk of his, there not having been any previous negotiation for the sale of them, and the clerk gave him 1*l.* for them. It was not disputed that P. made this transfer in order to escape liability, but the court was satisfied on the evidence that it was an absolute and *bonâ fide* transfer, out and out, without any trust or reservation: the court of appeal held, that P. was not a contributory. *Re Mexican and South American Company*, *De Pass's Case*, 4 De G. & J. 544.

Although a shareholder in an abortive company (the shares in which pass by delivery of scrip certificates) may transfer his shares to an individual for the purpose of getting rid of liability, there must be a substantial sale, and not a mere false or hollow pretence of a sale. *Re Mexican and South American Company*, *Costello's Case*, 2 De G., F. & J. 303; 30 L. J., Ch. 113.

An executor, for a nominal consideration, transferred shares in a banking company to one of the *cestuis que trustent* under the will, in order to enable him to become a director: it was held, that the transfer was good, and the transferee liable to be a contributory. *Ex parte Bigge*, 5 Jur. N. S. 7; 28 L. J., Ch. 50; 7 W. R. 30, V. C. S.

J. was a director and shareholder in a company which had become embarrassed, and he was desirous of having it wound-up. The majority of the directors negatived a motion for having it wound-up, and entered into an arrangement with S. for the purpose of bringing its affairs into a more prosperous state. By this arrangement S. was to have a number of shares transferred to him or his nominees, and was to have

powers and privileges which it was a breach of duty to give him. J. did not, in his capacity of director, concur in or assent to this arrangement, but he transferred all his shares to a nominee of S., and agreed with S. to pay a certain sum, in addition, upon being released from all liability in respect of a certain demand against the company. The consent of the directors to transfers was not requisite. The court was satisfied that J. made the transfer, not to facilitate the arrangements between the other directors and S., but to escape from the company; and there was nothing to show that the transferee was a trustee for the company: it was held, that the transfer was valid and not liable to be impeached in equity. *Re London and County Assurance Company, Ex parte Jessop*, 2 De G. & J. 638; 5 Jur. N. S. 1.

Upon the winding-up of a company carried on upon the cost-book principle, it appeared by their deed that shares in the company would pass by the delivery of the certificates; but no shareholder was entitled to a dividend unless his name was entered in the share register book. A shareholder who had transferred his shares, but whose transferee had not been registered, was held to be liable as a contributory of the company. *Re Wrysgan Slate Quarrying Company, Ex parte Humby*, 28 L. J. 875, Ch; 5 Jur. N. S. 215.

Shares of a company were transferable by delivery. After the company was in difficulties, and a few days before an order was made to wind it up, a shareholder transferred his shares to his foreman. The court held that it was inoperative, on the ground that it was not *bonâ fide*, and that the transferor was a contributory. *Re Mexican and North American Mining Company, Ex parte Lund*, 27 Beav. 465; 28 L. J., Ch. 628.

A shareholder in a mining company, in which the shares passed by delivery, knowing the company to be in difficulties, sold his shares to a warehouseman in his employ a few days before an order for winding-up the company was obtained, the consideration being paid by the transferee out of the proceeds of certain shares assigned to him by the shareholder: it was held, that there was no *bonâ fide* transfer, and that the shareholder was liable as a contributory. *Re Mexican and South American Mining Company, Ex parte Hyam*, 6 Jur. N. S. 181; 29 L. J., Ch. 243; 4 De G. & J. 544.

A shareholder in a company *in extremis* is entitled to transfer his shares to any one absolutely; but a duly registered transfer to a trustee for the transferor, executed with the intention of getting rid of liability and reserving the benefit of the shares, does not relieve the transferor from his liability, even when the deed of settlement declares that trusts shall not be recognized, and that the person on the register shall be deemed the beneficial owner of the shares. *Chinnock's Case, Re Athenæum Life Assurance Company*, 1 Johns. 714.

A mining company, the shares in which passed by delivery of the certificates, being in difficulties, a shareholder, who was desirous of avoiding liability, delivered his shares to a broker, and shortly afterwards introduced him to P., who bought them at the market price, and paid for them by handing to the broker some bank shares standing in P.'s own name, which the broker sold, and, after retaining the price of the mining shares, handed over the balance to P. The certificates of the mining shares were at the same time delivered to P. A few days afterwards an order was made for winding-up the mining company. P. was a clerk in the employ of H., and upon investigation it turned out that the bank shares, though standing in P.'s name, belonged to H.: it was held, that the transfer of the mining shares to P. must be regarded as merely colourable, and that the name of H. must be retained on the list of contributories. *Re the Mexican and South American Mining Company, Hyam's Case*, 1 De G., F. & J. 75, on appeal.

Colourable
transfer—
secret trust.

A holder of shares in a company transferred them to a person who was an attorney's clerk for an alleged consideration. On examination before Wood, V.-C. in chambers, the transferor declared he had given the shares to the transferee. No consideration money was in fact paid for them. The transferee swore that at the time he accepted the transfer he was not even aware in what company the shares were; that he was in the habit of signing transfers for the transferor without making inquiries about them. The certificates of transfer were left with the transferor: it was held, by the court of appeal, that the transfers were not *bonâ fide*, and the name of the transferor was ordered to be put upon the list of contributories. *Re Esgair Mwyn Mining Company, Ex parte Alexander*, 9 W. R. 410; 8 W. R. 660.

A proposal was made by a director of a company to his co-directors, that for the benefit of the company a certain number of shares should be taken by each, and by way of example, such director signed the deed for 2,000 shares. The proposal was not entered on the minutes, nor were any shares handed over or taken by the other directors, but his name was returned to the stamp office for the shares. Having ceased to be a director, and knowing the failing circumstances of the company, at his request the directors cancelled his shares: it was held, that this was beyond the powers of the directors, as they had no power by the deed of settlement to cancel or diminish the capital, but only to forfeit the shares, and was a fraud on the part of the shareholder, who was held to be a contributory in respect of the cancelled shares. *Richmond's Case and Painter's Case*, 4 Kay & J. 305.

Under a written agreement between B. and two of the directors of a completely registered company, B. accepted paid-up shares, which were declared to be transferable by delivery, and to entitle the holder to rank as a shareholder. The

agreement also provided that the shares might be held or disposed of by B. without his signing the deed of settlement of the company. There was no *mala fides* in the agreement, and B. neither executed the deed of settlement nor signed any transfer to himself of the shares, but the directors of the company, on its being wound-up, registered and returned him as a shareholder: it was held, that the agreement exceeded the power of the directors; that under the circumstances, B. might avail himself of its invalidity; and therefore that he was not liable as a contributory. *Electric Telegraph Company of Ireland v. Bunn*, 6 Jur. N. S. 1223; 29 L. J., Chanc. 918; 9 W. R. 43.

If the directors of a company take a transfer of the shares of a shareholder to a nominee to prevent an exposure of its affairs and the prosecution of a petition to wind-up the company it will not relieve the shareholder from his liabilities to the company, or prevent him on a winding-up order being obtained from being put upon the list of contributories to the company in respect of his shares. *Ex parte Eyre, Re the Mitre Assurance Company*, 31 L. J., Chanc. 640.

In order to constitute a valid sale of shares so as to entitle the vendor to have his name excluded from the list of contributories, though it is not necessary that the purchaser should be a person capable of meeting all demands that may be made upon him in respect of the shares, the transaction must be *boná fide* as between the vendor and purchaser. *Re the Phoenix Life Assurance Company, Ex parte Hatton*, 31 L. J., Chanc. 340; 10 W. R. 313.

A shareholder withdrew from a company in pursuance of various resolutions passed at several general and special meetings; he paid what was required of him and the company was subsequently remodelled; twelve years and five months afterwards the company was wound-up under an order of the court: it was decided on appeal by the Lords Justices, affirming the judgment of M. R., that the lapse of time and the subsequent acts of the company prevented any inquiry into the validity of the transaction, and that the retiring shareholder could not be placed on the list of contributories. *Ex parte Brotherhood, Re the Agricultural Cattle Insurance Company*, 31 L. J., Chanc. 861.

Where, by the rules of a mutual guarantee society, notice of the withdrawal of any of the members was required to be given, but no particular form of notice was required, nor was it stated to whom the notice should be given, a parol notice of withdrawal given by a member to the agent through whom the original contract with the society was made was sufficient. *Re the Solvency Mutual Guarantee Society, Hawthorne's Case*, 31 L. J., Chanc. 625.

Sale of
shares.

A. agreed to sell his shares in a joint stock bank to B. at par, the shares to be transferred by A. to C., who was to hold

the same as a trustee for B., but charged with purchase-money and interest at 5*l.* per cent. payable half yearly, until the principal was fully paid. C. agreed to hold the shares upon the trusts expressed. The shares afterwards were transferred by A. to C. by deed; but the deed of settlement required a notice of all proposed transfers to be left at the office of the directors, which was not done. The assignment not having been registered when the first dividend after the transfer became due, A. received it and retained the surplus after payment of the interest of the purchase money of the shares on account of another debt due to him by B. A subsequent dividend was received by C. and paid over by him to A., who appropriated it as he had done with the former dividend: it was held, that A. had ceased to be the owner of the shares, and was not properly included in the list of contributors. *Ex parte Scully*, 6 Ir. Eq. R. 524.

A general meeting of shareholders of a mining company (carried on on the cost-book principle) acting within the scope of their authority, passed a resolution authorizing the committee of management to make an arrangement with the shareholders in arrear for calls, that on any shareholder in arrear surrendering to the committee the whole of his shares, he might be entitled to redeem within the month so many of his surrendered shares, which at 1*9s.* per share (the amount of calls in arrear) would equal the amount paid by him provided the then call of 2*s.* per share were paid upon the shares when redeemed. In the month of January three of the shareholders executed a surrender of their shares to the committee in the usual form, and claimed to be entitled to the reduced number of shares upon payment of the call of 2*s.* per share. Nothing further was done either on the part of these shareholders or the company, but in May following the secretary wrote to them, stating that the number of their shares had been reduced, and requiring them to pay the call of 2*s.* and other calls since made. In answer to this letter one of the three shareholders wrote to the secretary stating that it would not be convenient for him to pay the calls upon the whole number of shares, and asking that the number might be reduced. The company was afterwards wound-up: it was held, that the transaction of January amounted to a relinquishment by the three shareholders of all their shares in the company, and that they ought not to be placed upon the list of contributors. It was held also, that the letter written by one of the shareholders was written in ignorance of his position, and did not alter the effect of the transaction of January. *Re Bodmin United Mines*, 3 Jur. N. S. 350, Ch.

Relinquishment of shares.

A. was the holder of shares in a mining company established on the cost-book principle. In accordance with one of the rules of the company he gave notice in April, 1857,

Part IV.—Winding up of Companies, &c.

to relinquish his shares, but he had not then paid all his arrears, and the pursuer declined to take the relinquishment. In May the arrears were paid, and on the 4th of June his solicitor applied to the pursuer to know why the name was retained on the list. On the 26th of June the company was registered as a limited company under the 19 & 20 Vict. c. 47, and A.'s name was then returned as a shareholder. The company being in July ordered to be wound-up, A.'s name was placed by the commissioner on the list of contributories. On appeal, it was considered that the proper course was for A. to apply to have his name removed from the list of shareholders, and the petition of appeal being agreed to be treated as such application, the name was removed from the list. *Re Welsh Potosi Lead and Copper Mining Company, Ex parte Birch*, 27 L. J., Bank. 4.

A. was holder of shares in a mining company established upon the cost-book principle. In October, 1856, it was determined by the shareholders to register the company as "limited," under the 19 & 20 Vict. c. 47, with a view to its being wound-up; but the registration was not effected until June, 1857. In January, 1857, A. sold his shares, and the transfer was completed, but his name was not returned as a shareholder on the company's being registered in June, 1857. In July the company was ordered to be wound-up: it was held, on appeal, that the holder's name was improperly placed on the list of contributories. *Re Welsh Potosi Lead and Copper Mining Company (Limited), Ex parte Lofthouse*, 27 L. J., Bank. 1.

By rule 27 of the cost-book, the interest of a shareholder, "who has transferred his shares in accordance with the company's rules," in such shares shall thereupon cease, and he or she shall be thereupon freed from all future liabilities in respect thereof. By sect. 62 of the Joint Stock Companies Act, 1856, a shareholder in a company, other than a limited company, who has ceased to be a shareholder for three years, and by sect. 63, a shareholder in a limited company who has respectively ceased to be a shareholder for one year prior to the commencement of the winding-up of the company, shall be deemed, for the purposes of contribution towards payment of the company's debts, &c., to be an existing shareholder, and be subject to the same liabilities to creditors as if he had not so ceased to be a shareholder. Where a shareholder had, within a year of the company being wound-up, transferred his shares, and the transfer had been accepted by the transferee, and his name duly registered in the cost-book of the company: it was held, that he continued liable to the debts of the company incurred before the transfer, and that the circumstance that the company had since the transfer been registered under the Joint Stock Companies Act, 1856, as a

limited company, it having been previously other than a limited company, made no difference, except as to whether sect. 62 or 63 was to apply. It was held also, that the omission to enter the name of the transferor as well as of the transferee upon the list delivered to the registrar of Joint Stock Companies under sect. 111, will not, upon the construction of that and the 113th section, affect the liability of the transferor. *Re Welsh Potosi Lead and Copper Mining Company, Limited*, 29 L. J., Bank. 400.

A shareholder in a company carried on upon the cost-book principle relinquished his shares, upon paying his proportional portion of the liabilities of the company. All the formalities required for the relinquishment of such shares were regularly complied with and entered in the books of the company, and the correspondence was conducted with the purser, who fixed the amount to be paid by the shareholder, without the sanction of the managing committee: it was held, that the purser being the authorized officer of the company to conduct such transactions, the shareholder was exempted from liability in respect of any excess of power on the part of the purser, and upon the winding-up of the company it was ordered, that such shareholder should not be placed upon the list of contributories. *Re the Wrysgan Slate Quarrying Company, Ex parte Birch*, 28 L. J., Ch. 894.

Relinquishment of shares in mine.

The charter of a company empowered the directors to increase the capital by the issue of new shares of 100*l.* each, but not less than 10,000*l.* at a time; and it was provided, that the additional capital derived from such new shares should not be published and declared as a portion of the capital till the board of trade was satisfied that the whole amount of the increase of capital from time to time determined on had been subscribed for the shares issued, at least 50*l.* per share paid up, and a supplementary deed executed by the persons taking the shares. An issue of 2,000 new shares was determined upon, the subscribers to be entitled to 5*l.* per cent. interest on the sums paid by them until they had paid up 50*l.* per share, and afterwards to participate in dividends. A person took some of them, paid up 50*l.* per share, and executed a supplementary deed, obtained certificates of shares and received interest; but only a small part of the 2,000 shares was ever subscribed for, the sums received in respect of them were entered in the reports, under the head of liabilities: it was held, that he was a shareholder liable to be placed on the list of contributories, and not entitled to rank as a creditor for what he had paid. *Re Royal British Bank, Mixer's Case*, 4 De G. & J. 575.

One of the directors and promoters of a company took 500 shares, in order to enable the company to be registered; calls were made on those shares, and at a meeting of the directors,

Director—
forfeited
shares.

by a resolution seconded by this director, his shares were declared to be forfeited, and shares bearing the same numbers were issued to other persons: it was held, that the director was still liable as a contributory in respect of those shares. At a meeting of directors a sum of money was voted to this director for introducing a new manager, and in consideration of an equal sum this director was declared free from all liability as to the forfeited shares; it was held, that he was still liable as a contributory in respect of those shares. *Re London and County Insurance Company*, 4 Jur. N. S. 448, Ch.

A deed of settlement of a company provided, that if a shareholder should fail to pay a call for two months, the secretary shall send him a notice requiring payment within twenty-one days, and if the sum should not be paid within that time, the directors might declare the shares to be forfeited. A. and others having failed to pay for more than two months, the directors passed a resolution that notices should be sent to them requiring immediate payment, and that unless the calls were paid within twenty-one days, the shares should be immediately forfeited. A notice was accordingly sent to A., that if he did not pay his calls within twenty-one days his shares should be immediately forfeited. He did not pay. The company went on for three years, during which he was not treated as a shareholder, and did not claim to be one, though his name remained on the register. The company being wound-up: it was held, that the declaration of forfeiture, though not strictly regular, complied substantially with the requisitions of the deed of settlement, and that A. was not a contributory. *Re Home Counties and General Life &c. Assurance Company, Wollaston's Case*, 4 De G. & J. 437.

One of the directors and promoters of a company took 500 shares, in order to enable the company to be registered; calls were made on those shares, and at a meeting of the directors by a resolution seconded by a director, his shares were declared to be forfeited, and shares bearing the same numbers were issued to other persons: it was held, that the director remained liable as contributory in respect of such shares. At a meeting of directors a sum of money was voted to that director for introducing a new manager, and in consideration of an equal sum the director was declared free from all liability as to the forfeited shares, but notwithstanding he was held to be liable as a contributory. *Re London and County Insurance Company, Jones's Case*, 4 Jur. N. S. 448; 27 L. J., Ch. 666.

Certain shares were, as fully paid-up shares, issued and allotted to the vendor of the works and premises wherein the company was to carry on its business. The vendor accepted and treated the shares as paid up, and subsequently transferred to each of the appellants in the suit, who were di-

rectors of the company, 100 of such shares. It was decided, that as the shares had been allotted to a stranger as paid-up shares, they could not be considered as otherwise by the court, and neither the stranger nor his alienees would be liable as contributories in respect of them. If the shares had been originally issued fraudulently, it would have been competent to the court to have set aside the transaction, as it cannot alter the terms of the agreement, nor treat as shares not paid up shares which had been expressly issued as such. It was also decided, that the directors could not be made contributories with respect to shares declared to be paid up taken by them in lieu of attendance fees. *Ex parte Currie, Re Great Northern and Midland Coal Company (Limited)*, 7 L. T., N. S. 486.

Shareholders in a joint stock company who have subscribed the memorandum of association and assumed to act as directors throughout, no other directors having been chosen by the company, by holding themselves out to the world as directors, paying themselves their attendance fees out of the company's funds, &c., and who have also signed the articles of association, whereby the qualification of a director is fixed at 100 shares, but who had not taken or accepted such shares as such qualification, cannot be regarded as contributories as the holders by implication of 100 shares necessary to constitute a qualification. Holders of free or "paid-up" shares must be placed upon the list of contributories in respect of those shares, without reference to the question whether or not they will ever be subject to a call. Directors allotting fees to themselves for attendance as directors, and employing such fees in the purchase of "paid-up" shares in the company, there being no power in the articles to that effect, are contributories in respect of those shares. *Ex parte the Official Liquidator, Re the Great Northern and Midland Coal Company (Limited)*, 6 L. T., N. S. 662.

The proprietors of an intended company issued a prospectus headed "The Amazon Life Assurance and Loan Company and Sick Benefit Society," and stating that the intention of the projectors was, to form a loan and assurance company with a branch sick benefit society. The company was registered as "The Amazon Life Assurance and Loan Company." After this registration, an application headed in the same way as the prospectus was made for shares, and an answer was returned headed with the registered title, and stating that shares in the company so registered had been allotted to the applicant. The applicant paid the deposits on the shares and received certificates headed with the registered title, but did not acknowledge the receipt of them or interfere any further. On the company being wound-up, it was held, that the allottee was not entitled to have his name removed from the list of contributories on the ground that he had applied for

shares in a different company, or on the ground that he had been informed that he would only incur a limited liability. *Re Amazon Life Assurance and Loan Company, Blackburn's Case*, 8 De G., M. & G. 177; see *ante*, p. 128.

The deed of settlement of a joint stock company provided for the division of the persons concerned in it into three classes: (1). Those interested in the mutual investment or depositors' fund; (2). Those interested in the mutual assurance fund; (3). Those interested in the general fund. The deed also provided, that the depositors or holders of the investment stock (1), were to have such interest not exceeding 5*l.* per cent., as should be determined by the directors of the association; and it gave the depositors any surplus profits on that stock. The depositors or holders of that mutual investment stock (1) paid their money over the counter of the company, and received in return certificates of acknowledgment referring to the deed of settlement, and stating, that the interest was payable half-yearly on the deposits so made. The prospectuses of the association and an almanac issued by the directors also referred to the rate of interest payable to the depositors, and spoke of the profits to be realized by them on their deposits. On appeal, the Lords Justices held, reversing the order of the Master of the Rolls, that the prospectuses contained nothing to show that the "investment" contemplated was anything more than an ordinary deposit with the bank, and could not give the depositors any claim to a share of the profits, and that their names must be removed from the list of contributories; and further, that the fact that the prospectus mentioned the special act of parliament of the company, which act referred to the deed of settlement, was not notice of the contents of the deed. Also, that consent to become a director was not a consent to accept the necessary qualification for that office under the deed; that a person who had no actual notice of the deed could not, under any circumstances, be taken to have had constructive notice thereof; and that consent to become a director did not impose the obligation of accepting any stock; and generally, that the mere fact of filling the office of a director did not make such director a contributory. *Re National Assurance and Investment Association (The Bank of Deposit)*, *Ex parte Davis and Ex parte the Marquis of Abercorn*, 31 L. J., Ch. 828.

If directors of a company, by a resolution duly entered in a minute book, agree to pay themselves certain fees for attendance, and to accept shares of the company as paid-up shares in lieu of cash, as they are considered paid-up shares, no call can be enforced in respect of such shares in the event of the company being wound-up, notwithstanding that the articles of association are silent on both points, and no general meeting of the company have assented thereto. *Ex parte Carne, Re Great Northern and Midland Coal Company*

(Limited), 1 N. R. 71, L. J.; *Maxwell v. Port Tenant Patent Steam Fuel and Coal Company*, 24 Beav. 495.

In the deed of settlement of a company being wound-up it was provided that no person should be or continue to be a director, unless he was the holder of a certain amount of stock. The general board of management was at the chief office in London, and at the branch offices in different towns in the kingdom there were local agents or deputies, with limited powers, who were called provincial directors: it was held, that the clause requiring the qualification did not apply to these. One of such provincial directors at Bath, who had never been the holder of any stock whatever, was held not to be liable to be placed on the list of contributories. On an appeal by the official manager, seeking to place on the list of contributories the name of an illegal contributory, the creditors' personal representative is not as of right entitled to be heard. *Ex parte Cottrell, Re National Assurance and Investment Association (The Bank of Deposit)*, 7 L. T., N. S. 341.

When an order has been made under the Joint Stock Companies Amendment Act, 1858, for the compulsory winding-up of a company, the court, notwithstanding the discretionary power which it has, will not sanction a compromise between certain of the contributories, unless upon sufficient evidence being furnished as to the basis on which the compromise is to be supported. *Re the Northumberland and Durham District Banking Company*, 6 Jur. N. S. 849; see sect. 160, *post*.

A person who had been a provisional committee-man in a company, which was an inchoate railway company, had in that capacity attended one meeting and no more, and in the then state of the decisions as to the liability of provisional committee-men as between them and the other shareholders, it was understood to be the law that no liability attached upon a contributory existed, unless the party was legally liable to some creditor of the company. And it had been accordingly determined by the master in 1852, that the committee-man was only liable as contributory in respect of the acts of the committee on the day on which he attended it, and he was placed on the list of contributories as a contributory limited to that day. But it appeared by the notes of the master's judgment, that he had expressly reserved liberty to the official manager to open the question further if he should see grounds for claiming to extend the liability. From that time nothing had been done in respect of C.'s liability. In the meantime other persons as liable as the first who had not been put upon the list as general contributories were, it was alleged, freed at law under the Statute of Limitations from any legal liability they might have incurred to creditors. In this state of things an application had been made to the master on the authority of *Spottiswoode's Case* in particular, and on the tender of further evidence, for leave to review the decision of 1852 upon

Enforcing
order for
calls upon
contribu-
tories.

recent and upon such further evidence. It appeared that the evidence had not been looked at by the master, but he decided upon the citation and argument of the cases and the allegation of further evidence, that there was enough to justify an order to review. On appeal the court confirmed this decision. *Ex parte Viscount Curzon*, 3 Drew. 508.

The court refused to make an order under sect. 66 of the 11 & 12 Vict. c. 45, enforcing payment against the contributories of a company in course of winding-up of a debt found due to a creditor, there being no assets sufficient to pay it in the hands of the official manager, upon the ground that a call was the only medium through which the court ordered debts so found due to be paid. *Re Cameron Coalbrook Steam Coal and Swansea and Lougher Railway Company*, 9 W. R. 684—R.

An order *ex parte* was made under 21 & 22 Vict. c. 60, ss. 12, 13, for the enrolment of an order of the Court of Session in Scotland, directing payment by contributories of a sum of money, or in default, attachment. *Re Western Bank of Scotland*, 1 De G., F. & J. 1.

A contributory to the liabilities of a company in course of being wound-up was ascertained by the official assignee to be the owner of shares standing in her name in the books of another company: it was ordered that such shares should stand charged with the amount due from her in respect of a call made upon her as such contributory, but without prejudice to a claim of lien upon such shares in respect of a debt claimed by the company in whose books the shares were standing from the company in course of being wound-up. *Re Connell*, 25 L. J., Chanc. 649.

Proof of
debts.

After a winding-up order has been lodged in the judge's chambers the chief clerk will, within ten days afterwards, insert in the London Gazette an advertisement requiring the creditors to come in before him and to prove their debts and demands, or be precluded from the benefit of any distribution which may be made before new debts are proved; see 11 & 12 Vict. c. 45, s. 72; 19 & 20 Vict. c. 47, s. 84.

Debts are proved by creditors before the chief clerk by affidavit or declaration in the same manner as in bankruptcy, but power is given to the judge to allow or direct debts to be proved by the official liquidator, which power is exercised with the view of saving expense, 11 & 12 Vict. c. 45, s. 74. It is declared by the act 11 & 12 Vict. c. 45, s. 3, that the word "creditor" shall for the purposes of that act include every person having any debt or demand enforceable against the company in any court of law or equity, or for non-payment or non-satisfaction of which damages could be recovered." Provision must therefore be made for equitable debts; *Terrell v. Hutton*, 4 H. L. C. 1091; and trustees of the company having claims against it are entitled to be paid like other creditors. *Croxton's Case*, 5 De G. & S. 432.

Debts not barred by the Statute of Limitations when they are established will be paid, notwithstanding the subsequent lapse of time might be sufficient to bar them. *Wryghte's Case*, 5 De G. & Sm. 244; see *ante*, pp. 84, 85; *Ex parte Higgins*, 2 Jur. N. S. 178. When creditors have been precluded from suing under the stat. 20 & 21 Vict. c. 78, s. 7, the Statute of Limitations ceases to operate against them.

What debts may be proved.

The bill of a solicitor had been taxed and ordered to be paid out of the first funds of the company to be received by the official manager, but the solicitor abstained from taking proceedings to obtain payment for more than six years, the affairs of the company in the meantime having been settled by a compromise: it was decided, that the solicitor could not require a call to be made for payment of his bill. *Ex parte A'Beckett*, 2 Jur. N. S. 684; see *Gloucester, &c. Railway Company*, 6 Jur. N. S. 116, *ante*, p. 85.

A mortgagee appears to be entitled to prove without giving up his security, as is requisite in bankruptcy. *Wright's Case*, 14 Jur. 498; see 12 & 13 Vict. c. 45, s. 74.

Proof was allowed under a winding-up order against a company in the case of a secretary, who, without borrowing powers, had borrowed money for the company, which was *bonâ fide* employed for its benefit. *Electric Telegraph Company of Ireland, Troup's Case*, 7 Jur. N. S. 901; 8 W. R. 878.

An *ex parte* order was made for a person carrying in a claim under a winding-up to sue *in formâ pauperis*. *Ex parte Fry*, 1 Drew. & Sm. 318.

After a claim made by a director against a company under a winding-up order had been disallowed, the court would not allow his executors, who had discovered letters, which at the time of the claim were in the director's possession, but not brought forward by him, to use such letters for the purpose of establishing such claim. *Re Warwick and Worcester Railway Company, Ex parte Kelly's Executors*, 9 W. R. 329.

A creditor, whose claim is disallowed, may either appeal from the decision, *Ernest v. Nicholls*, 6 H. L. C. 101, or apply for leave to take proceedings for establishing his case at law, *Armstrong's Case*, 3 De G. & Sm. 140, or take proceedings without leave, if not precluded by the act 20 & 21 Vict. c. 78; for the Winding-up Acts, 1848, 1849, do not preclude a creditor from pursuing his legal remedies for the recovery of his debts. *Hutchinson v. Harding*, 11 Exch. 561.

The official manager or contributories, if dissatisfied with the allowance of debts, may appeal. *Ex parte Gwyn*, 1 Jur. N. S. 300. Contributories have been allowed to be heard upon an appeal by an official manager. *Re Norwich Yarn Company*, 13 Beav. 428; *Re Bodmin United Mines*, 23 Beav. 385.

An order for a call was made on the 10th of September, 1857, in the progress of winding-up a company in bankruptcy

under the 19 & 20 Vict. c. 47. On 20th of November, 1857, a peremptory order was made on a contributory for payment of the amount payable by him in respect of the call. On 27th November, he obtained from the commissioner an order suspending the last-mentioned order. On the 3rd February, 1858, the commissioner rescinded the order of 27th November. The company then appealed against the orders of the 10th September, 20th November and 3rd of February. The court of appeal held that the 19 & 20 Vict. c. 47, gave no right of appeal, except by reference to the Bankrupt Act, 12 & 13 Vict. c. 106, and no appeal having been brought against any of the orders of 10th September and 20th November, within the time limited by the 12th section of the latter act, those could not be questioned, and that as there could be no appeal from the orders of the 10th September and 20th November, it must be assumed in determining as to the continuance or not of the suspending order, that the above-mentioned orders were originally right. *Ex parte Clarke*, 2 De G. & J. 245; 4 Jur. N. S. 800; 27 L. J., Bank. 25.

Practice on winding-up under the previous acts.

An affidavit of personal service of an order for payment under the Winding-up Acts need not state where the service was effected. *Re Job, Re Nantte Slate Company*, 27 Beav. 32.

Where a creditor of a company in the course of winding-up cannot proceed to recover his debt by reason of want of means, the court will allow him to sue *in formâ pauperis*. *Re Irish Land Improvement Society, Ex parte Fry*, 9 W. R. 51.

Notice to creditors is given in winding-up cases, though it is not imperative that notice should be given. *Ex parte Totty*, 29 L. J., Chanc. 702; 8 W. R. 713.

An order of a Scotch court in a winding-up suit was ordered, after having been entered here, to be enrolled on an *ex parte* application. *Re Western Bank of Scotland*, 8 W. R. 1.

A representative of creditors appointed under the 1st section of the 20 & 21 Vict. c. 78, is entitled to attend before the master at the settling of the list of contributories of the company under process of winding-up, he being interested in watching who is put on and who is struck off the list. *Re Mexican and South American Mining Company*, 4 Jur. N. S. 595; 27 L. J., Chan. 658—L. J.

A creditor has a right to attend and supervise proceedings in chambers under the Winding-up Acts in any way he may consider desirable for securing payment of the debts of the company. *Re London and Eastern Banking Corporation*, 4 Kay & J. 273. The proper course to be taken by the creditors' representative for this purpose is pointed out in this case.

An executrix of a deceased policy-holder obtained judgment against an insurance company for the amount of the policy, and issued a writ of execution against the company, to which a return was made *nulla bona*. An order was afterwards made to wind-up the company and an official manager was

appointed. The executrix proved her debt, which was duly allowed. No creditors' representative had been appointed under the 20 & 21 Vict. c. 78. A demurrer to a bill by the executrix against the official manager to obtain payment of the policy money was overruled. *Robson v. M'Creight*, 4 Jur. N. S. 269; 27 L. J., Ch. 47.

An adjudication in bankruptcy against a public company is valid, although made after the order for winding-up and appointment of the official manager, notwithstanding the 20 & 21 Vict. c. 78, under which act the assignees are in the same position as if they had petitioned for the winding-up of the affairs of the company under the 11 & 12 Vict. c. 45. *Re London and Eastern Banking Corporation*, 4 Jur. N. S. 743; 27 L. J., Ch. 457. Upon the appointment of assignees in bankruptcy after an order for winding-up, such assignees become the creditors' representatives, by which the creditors are made parties to the winding-up, and the bankruptcy is of no further avail than to clothe the assignees with authority to concur with the official manager in winding-up the affairs of the company, and the court will grant an injunction to restrain the assignees from using the proceedings in bankruptcy in any other way than in their character of creditors' representatives. *Ib.*

Where a creditor brought an action against a company, pending a petition for winding-up, the court held that discretion was given to the judge to stay proceedings, and an injunction was granted to restrain the action until the hearing of the petition. *Re Northumberland and Durham District Banking Company*, 27 L. J., Ch. 354. Upon the petition coming on to be heard subsequently, the court decided under the circumstances upon granting an order for voluntary winding-up of the company. *S. C.*, 4 Jur. N. S. 419; 27 L. J., Ch. 356.

A party about to be put upon the list of contributories is entitled to question the regularity of the winding-up order. *Re Mexican and South American Mining Company, Ex parte Barclay*, 4 Jur., N. S. 1042; 27 L. J., Ch. 660. On a motion to place a shareholder on the list of contributories, it is not competent for him to raise a question as to the validity of the winding-up order, but liberty will be given to move to discharge the order by a substantive application to the court. *Ib.*

Contributories are not entitled to be heard on a question as to placing others on the list. *Re Bodmin United Mines Company*, 23 Beav. 385.

An alleged contributory under a winding-up order was summoned before the chief clerk as a witness and to produce papers. He refused to be sworn, on the ground that it was important that he should have the assistance of counsel. Upon a motion to commit, it was held that the witness had

no right to refuse to be sworn, but that the proper course was, after he was sworn, to apply to the chief clerk to have his examination taken before the judge or an examiner, and, if necessary, to have the question determined by adjournment into court. *Ex parte Bunn*, 3 Jur. N. S. 1013.

An application to a judge or master under the 20 & 21 Vict. c. 78, s. 7, for leave to take proceedings at law, should be made in chambers. *Re Royal British Bank*, 3 Jur. N. S. 1114.

Costs of
proving
debts.

The general costs of winding-up the company and the costs of proving debts and of trying issues, and of all other matters in which creditors or any particular contributories or classes of contributories of the company shall be interested, shall be at the discretion of the master (now the judge at chambers), and shall be paid either out of the general estate of the company or out of any portion of the general estate, or shall be debited or credited to any individual contributories or classes of contributories, or shall be subject to such set-off as the master shall from time to time direct. 11 & 12 Vict. c. 45, s. 103. The costs of all proceedings which shall take place before the court shall be in the discretion of the court. *Ib.* s. 104. All costs shall be ascertained by the judge at chambers or shall be taxed, settled and adjusted by such persons as he shall direct, and the taxing masters of the court are required to tax all such costs as the judge at chambers shall direct to be taxed by them, and to make their certificate of such taxation in the usual manner. *Ib.* s. 105.

Recovery of
costs.

All costs ordered to be paid under the act are recoverable in the same manner and by the same process as costs ordered to be paid by any party under any order or decree made in a suit pending in the court. *Ib.* s. 106. As to the recovery of costs, see Smith's Ch. Pr. pp. 225—229 (7th ed.); Daniell's Ch. Pr., ch. xxvii, s. 6.

Jurisdiction
as to costs.

Under the above provisions there was no jurisdiction to order the costs of improperly summoning persons as contributories to be paid by the official manager. *Ex parte Marsh*, 1 M. & G. 302; 1 Hall & T. 578; 13 Jur. 995; 19 L. J., Ch. 161. It seems that a company ought not to be charged with the costs of more than one petition for an order to wind-up its affairs. *Re Madrid and Valencia Railway Company*, 3 De G. & S. 127; 14 Jur. 55.

In appeals under the Joint Stock Companies Act, 1848, 1849, the general rule of practice of the Court of Chancery, by which a successful appellant is not allowed the costs of his appeal, does not apply to proceedings under the Winding-up Acts, but the costs of all the proceedings are in the discretion of the court. *Ex parte Hall*, 1 De G., M. & G. 1; 15 Jur. 1067.

Upon the hearing of a petition presented by a contributory, the court may dismiss the petition with or without costs, to

be paid by the petitioner, or it may make an order or decree directing the company to be wound-up or such other order or decree as it deems just. 19 & 20 Vict. c. 47, s. 72. A petition presented by a shareholder to wind-up a company after the presentation of a petition for an adjudication of bankruptcy against the company, but before the adjudication, was held to be irregular, and was dismissed with costs. *Re Mitre General Life Assurance, &c. Association*, 29 Beav. 1.

The petitioner, on whose petition an order absolute is obtained, shall, without delay, carry in the same before the master (now the judge at chambers), and in default of his so doing by the space of ten days next after the date of such order, any person being or claiming to be a contributory (or if the order is made under the acts 1856, 1857, 1858, claiming to be a creditor) "may present his petition to the court in the same matter, praying to have the carriage and prosecution of the said order absolute, and thereupon such order shall be made and directions given, as well with respect to the costs of the application or otherwise as to the court shall appear just, and it shall be sufficient to serve such last-mentioned petition in the usual manner, either upon the petitioner who obtained the order absolute or upon his solicitor, by whom such order was obtained." 11 & 12 Vict. c. 45, s. 17. All orders that are filed in the Judges' Chambers should be signed in duplicate, as it is inconvenient in the event of an order being required to be served to take it off the judge's file. 2 Smith's Ch. Pr. p. 23, n.

Petition after absolute order.

As a general rule a motion or an appeal will be dismissed with costs in the following cases and in those of a similar nature. If a contributory appeals without success against being retained on the list; *Sichell's Case*, 1 Sim. N. S. 187; *Reaveley's Case*, 1 De G. & Sm. 550; *Gibson's Case*, 2 De G. & J. 275; or against an order making or refusing a call; *Ex parte Cropper*, 1 De G., M. & G. 147; *Ex parte Chippendale*, 4 Ib. 19; or if the contributory makes an unsuccessful motion to discharge the winding-up order; *Ex parte Woolmer*, 5 De G. & Sm. 117; 2 De G., M. & G. 665; *Clarke's Case*, 1 Kay & J. 22; or to disturb a compromise made with other contributories. *Lacy's Case*, 4 De G., M. & G. 356. An appellant claiming to be a creditor, and who unsuccessfully appeals against a disallowance of his debt, will be charged with costs. *Ex parte Lloyd*, 1 Sim. N. S. 248; *Wryght's Case*, 2 De G., M. & G. 636.

Costs of appeal.

The above rule is applicable to an official manager who appeals without success in analogous cases, and the company will be liable to the payment of costs. See 2 Lindley on Partn. pp. 1144, 1145.

The court has jurisdiction to direct an official manager appointed under the Winding-up Acts, who in that character had unsuccessfully instituted a suit, to pay the costs of it personally. An order, that "the official manager do pay costs,"

renders him personally liable to the payment. *Grand Trunk Railway Company v. Brodie*, 3 De G., M. & G. 146; 17 Jur. 309; 22 L. J., Ch. 114; see *Ex parte Woodmer*, 22 L. J., Ch. 513; *Ex parte Roberts*, 1 Drew. 115; *Clifton's Case*, 5 De G., M. & G. 743; *Ex parte A' Beckett*, 2 Jur. N. S. 684.

Pending the decision of a question as between a managing committee and the contributories of a company, an order was made for a call upon all the contributories for the purpose of raising a sum sufficient for the payment of the debts and costs which had been proved and allowed. The court refused a motion, with costs, by three of the contributories to discharge or vary the order, on the ground that the managing committee were personally liable to the payment, but leave was granted to the contributories to take such proceedings as they might be advised. *Ex parte Gay*, 1 Jur. N. S. 463.

Although a winding-up order be made according to the prayer of the petition, the costs of it may in some cases be ultimately thrown on the petitioner. *Ex parte Sedgwick*, 2 Jur. N. S. 949. Except by agreement, the costs of contributories, representing a class in an unsuccessful contest, will not be allowed out of the estate. *Ex parte Watson*, 3 Jur. N. S. 853. Where the right to a winding-up order is established, the costs of intervening proceedings arising out of an opposition to the order must be borne by the respondents. *Re Bosworthen Mining Company*, 26 L. J. Ch. 612.

A creditor of a company is entitled to the costs in an action brought by him, until the advertisement under the Winding-up Act for creditors to appoint a representative has been issued. *Ex parte Tobin*, *Re Potosi Mining Company*, 4 Jur. N. S. 1093; 28 L. J., Ch. 44.

All costs properly incurred by the official manager are to be paid out of the assets of the company, and if necessary by calls on its contributories. 11 & 12 Vict. c. 45, s. 59. Representatives of creditors may concur in proceedings and in compromises which will bind all the creditors; 20 & 21 Vict. c. 78, s. 3, subject to their consent, if required by the judge, and every compromise and other arrangement is subject to such conditions as to payment of the costs of any actions, suits or other proceedings, and as to the obtaining the consent of creditors or any of them, as the judge or master shall think fit. 20 & 21 Vict. c. 78, s. 4.

Where an official manager has been appointed under a winding-up order, which is afterwards declared to be void, the Court of Bankruptcy has no jurisdiction to order payment to the official manager of the costs and expenses incurred by him under such winding-up order. *Re Plumstead Water Company*, *Ex parte Harding*, 11 W. R. 99; see Winding-up Acts, 1848, ss. 59, 83, 103; Act 1856, ss. 74, 86 and 87, and 21 & 22 Vict. c. 60, s. 11.

The creditors' representatives may appear upon an appeal

against an order putting another person upon the list of contributories, and his costs will be payable by the shareholders although the appeal fail, and the appellant be ordered to pay the costs of the official manager. *Budd's Case*, 10 W. R. 51; *Hatton's Case*, Ib. 313.

The creditors' representative has a right, under the 20 & 21 Vict. c. 78, to attend the settlement of the list of contributories, the expense of which falls on the latter; *Re Mexican and South American Mining Company*, 26 Beav. 172, and to have his costs on the appeal upon the question whether a person is or is not a contributory. *S. C.*, 27 L. J., Ch. 658.

The usual practice has been to allow to the creditors' representative his costs for simply appearing at chambers to support the same case as the official manager, but such practice has been disapproved. *Hatton's Case*, 10 W. R. 313; *Hoare's Case*, Ib. 381. The creditors' representative is entitled to appear when the summons is adjourned into court, and will be allowed the costs of such appearance. *Re Saxon Life Assurance Society*, 2 J. & H. 408. The court has declined to hear counsel for the creditors' representative on the hearing of the claimants of a debt against the company, and only allowed the costs of appearance. *Burges and Stirp's Case*, 2 J. & H. 441. Where a creditor's representative appears simply in that character, he will not be allowed the costs of such appearance; but when he appears in entirely different capacities the court will, according to the circumstances, allow such costs out of the estate. *Re Era Insurance Company, William's Case, The Anchor Case*, 7 L. T., N. S. 595.

On a petition to wind-up a company within the Stannaries, a creditor is not entitled to appear and oppose. *Re Tretoil and Messer Mining Company*, 2 J. & H. 421.

An order was made in 1849 for winding-up an abortive association for obtaining a railway act. One of the shareholders who had been put upon the list of contributories, obtained in India in 1853, a discharge under the Indian Insolvent Act, 11 & 12 Vict. c. 21. In his schedule filed in pursuance of that act, he did not refer to his liability under the winding-up order, nor in any way refer to the railway scheme. In 1858, having returned to England, he was put on the list of contributories. It was held by Lord Campbell, C., and Turner, L. J. (Knight Bruce, L. J., doubting,) that the omission in the schedule did not prevent the discharge from having the same effect as a certificate in bankruptcy in England. Such an objection would have been fatal in England, but in the India Insolvent Act, 11 & 12 Vict. c. 21, s. 60, the only condition is, that the insolvent shall have filed his schedule, and the specification of the debt was not a condition precedent to the discharge of the debt. It was also held, that where a com-

pany has come to an end before the bankruptcy of a shareholder, the certificate discharges him from all liability to contribute to debts, and also from all liability to contribute to the expenses of winding-up, and that he ought to be put upon the list of contributories. *Re Warwick and Worcester Railway Company, Parbury's Case*, Re, 3 De G., F. & J. 80; see *Chappel's Case*, 5 De G. & Sm. 401; *Greenshield's Case*, 5 De G. & Sm. 599.

Under a supplemental charter a banking company being empowered to issue new shares, a fraudulent report of the company's affairs was made by the directors, and adopted at a general meeting of the shareholders. In June, 1856, M., a customer of the bank, took twelve of these new shares, executed the deed and received the share certificates. In the next return to the stamp office his name was not inserted as a shareholder, and in the monthly balance sheet the sum paid by him for the shares was treated as a debt from the bank. In his pass book he was credited with interest at four per cent. upon the sum he had paid on account of the shares. M. also attended two meetings of shareholders. In September, 1856, the bank stopped payment, all the new shares not having been issued, and the affairs of the company were afterwards ordered to be wound-up: it was held, that M. was a contributory in respect of the twelve shares, and was not entitled to claim as a creditor in respect of the deposit paid for his shares. *Re Royal British Bank, Ex parte Mixer*, 28 L. J., Ch. 879.

Power of court to require delivery of property (a).

100. The court may, at any time after making an order for winding-up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker or agent (b), or officer of the company, to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estates or effects which happen to be in his hands for the time being, and to which the company is *primâ facie* entitled (c).

(a) 11 & 12 Vict. c. 45, s. 66.

(b) *Hollingsworth's Case*, 3 De G. & S. 102; 3 De G. & S. 180.

(c) See form of order for payment of money or delivery of books, &c., No. 13, *post*.

Power of court to order payment of

101. The court may, at any time after making an order for winding-up the company, make an order

on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned (*b*), of any monies due from him or from the estate of the person whom he represents to the company, exclusive of any monies which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the court in pursuance of this part of this act; and it may, in making such order, when the company is not limited, allow to such contributory by way of set-off any monies due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any monies due to him as a member of the company in respect of any dividend or profit:

Provided that when all the creditors of any company whether limited or unlimited are paid in full, any monies due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls (*c*).

(*a*) See 11 & 12 Vict. c. 45, s. 66.

(*b*) See form No. 13.

(*c*) See sect. 38, *ante*, p. 45.

102. The court may, at any time after making an order for winding-up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability (*b*), for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same (*c*).

Power of courts to make calls (*a*).

(a) This is nearly the same as the 82nd sect., 19 & 20 Vict. c. 47.

(b) See sect. 38, *ante*, p. 45.

Calls.

R. became a shareholder in a banking company and executed the deed of settlement for 120 shares. In winding-up the company the master decided, that the official manager's claim in respect of a call of 100*l.* per share on the shares held by R., should be considered as a specialty debt, and as overriding the set-off claimed by the executors of R., in respect of simple contract creditors. On motion to reverse or vary this decision: it was held, that the call created an original liability by force of the Winding-up Acts, the 11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108, and that the right of the official manager to receive, and the duty of the contributory to pay, and the remedy for enforcing that duty arose only under the statute, and therefore the call made upon R. was not a specialty debt against his assets; and the master's decision was reversed. *Ex parte Robinson's Executors*, 2 Jur., N. S. 11, Stuart, V.-C., assisted by Erle, J. That decision was affirmed on appeal to the Lord Chancellor, assisted by Cresswell, J. and Martin, B., *dubitantibus* Knight Bruce, L. J., and Turner, L. J.; *S. C.*, 2 Jur. N. S. 1173.

A call made by the master in winding-up a company established by deed under seal, by which the shareholders covenanted to bear the losses of the company in proportion to the number of their shares, and to pay calls to be made by the directors up to 50*l.* per share, is not a specialty but only a simple contract debt. Per Cranworth, C., agreeing in the opinion of Stuart, V.-C., Erle, J., Cresswell, J. and Martin, B. *Ib.*

The call made by the master in winding-up is a liability quite independent of any stipulation contained in the deed of settlement, and depends upon the general rules of the law of partnership. Per Cranworth, C., *Ib.*

The main purpose of the Winding-up Acts is not to secure the interests of creditors, but effectually to adjudicate and settle the legal and equitable rights of the partners *inter se*; and those rights must depend upon the contracts into which the parties have entered, and the Winding-up Acts have not altered the force and effect of those contracts, but only the mode of enforcing them by calls. Per Turner, L. J., *Ib.*

A company, which had obtained an act enabling the company to sue and be sued in the name of one of the members as a nominal plaintiff, was afterwards registered and incorporated pursuant to 19 & 20 Vict. c. 47, and 20 & 21 Vict. c. 14: it was held, that the incorporated company could sue for calls made by the directors before the incorporation of the company. *Hull Flax and Cotton Mill Factory Company v. Wellesley*, 6 H. & N. 38. After an order for the voluntary winding-up of a company, the liquidators appointed under the 19 & 20 Vict. c. 47, and 20 & 21 Vict. c. 4, may make calls without

giving the notices prescribed by the provisions of the deed of settlement or acts for calls made by the directors. *Hull Flax and Cotton Mill Factory Company v. Wellesley*, 6 H. & N. 38.

The proceeds of a call made under the Winding-up Acts, 1848 and 1849, to provide for the payment of a debt of the company, may be attached in the hands of the official manager, under the Common Law Procedure Act, 1854, 17 & 18 Vict. c. 125, to answer a judgment against the creditor. *Re Warwick, &c. Railway Company, Pritchard's Claim, Ex parte Turner*, 2 De G., F. & J. 354.

Where an action is brought for calls made by the liquidators who are winding-up a company, the contributory who is sued is entitled to set off debts due to him from the company. *Garnett and Moseley Gold Mining Company v. Sutton*, 1 New Rep. 93—Q. B.

By the deed of settlement of a company the capital was to consist of 100,000*l.* in 1,000 shares of 100*l.* each, and it was competent to any general meeting of the company to create additional shares of 100*l.* each. The company at a general meeting created 1,500*l.* new half shares of 50*l.* each, some of which the defendant purchased, executed the deed of settlement, and received dividends declared on the shares. It was afterwards resolved at a general meeting that the company should be wound-up, and the defendant was sued for calls made by the directors and the liquidators of the company: it was held, that he was estopped from denying that the 50*l.* shares were valid shares. *Hull Flax and Cotton Mill Factory Company v. Wellesley*, 6 H. & N. 38.

Where a company, originally registered as an unlimited company under 7 & 8 Vict. c. 110, was subsequently registered as a limited company under the act 1856, and was wound-up under that act, the company remained the same, and the jurisdiction of the court in the winding-up was not limited to dealings after the second registration. A person who was a shareholder before the second registration was, therefore, not entitled to have exemption from calls on the ground that his shares had been fully paid up. *Re Liverpool Tradesman's Loan Company (Limited)*, 11 W. R. 131; see *Lofthouse's Case*, 6 W. R. 140; *Re Plumstead Water Company*, 2 De G., F. & J. 20.
(c) See Rules, Nos. 33—35.

103. The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the bank of England or any branch thereof to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Power of court to order payment into bank (d).

(d) See 19 & 20 Vict. c. 47, s. 83.

Regulation
of account
with court.

104. All monies, bills, notes and other securities paid and delivered into the bank of England or any branch thereof, in the event of a company being wound-up by the court, shall be subject to such order and regulation for the keeping of the account of such monies and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same as the court may direct (a).

(a) See Rules, Nos. 11, 32, 36—41.

Provision
in case of
representa-
tive contri-
butory not
paying mo-
nies or-
dered (b).

105. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment thereof of the monies due (c).

(b) See 11 & 12 Vict. c. 45, s. 89.

(c) See sect. 95, *ante*, p. 111.

Order con-
clusive
evidence (d).

106. Any order made by the court in pursuance of this act upon any contributory shall, subject to the provisions herein contained for appealing (e) against such order, be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *primâ facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

(d) See 11 & 12 Vict. c. 45, s. 89.

(e) See sect. 124, *post*.

Court may
exclude cre-
ditors not
proving

107. The court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded

from the benefit of any distribution made before such debts are proved (*b*). within certain time (*a*).

(*a*) See 19 & 20 Vict. c. 47, s. 84.

(*b*) See Rules, Nos. 20—28, as to proof of debts, *post*.

108. If in the course of proving the debts and claims of creditors in the court of the vice-warden of the stannaries any debt or claim is disputed by the official liquidator or by any creditor or contributory, or appears to the court to be open to question, the court shall have power, subject to appeal as hereinafter provided, to adjudicate upon it, and for that purpose the said court shall have and exercise all needful powers of inquiry touching the same by affidavit or by oral examination of witnesses or of parties, whether voluntarily offering themselves for examination or summoned to attend by compulsory process of the court, or to produce documents before the court; and the court shall also have power, incidentally, to decide on the validity and extent of any lien or charge claimed by any creditor on any property of the company in respect of such debt, and to make declarations of right, binding on all persons interested; and for the more satisfactory determination of any question of fact, or mixed question of law and fact arising on such inquiry, the vice-warden shall have power, if he thinks fit, to direct and settle any action or issue to be tried either on the common law side of his court, or by a common or special jury, before the justices of assize in and for the counties of Cornwall or Devon, or at any sitting of one of the superior courts in London or Middlesex, which action or issue shall accordingly be tried in due course of law, and without other or further consent of parties; and the finding of the jury in such action or issue shall be conclusive of the facts found, unless the judge who tried it makes known to the vice-warden that he was not satisfied with the finding, or unless it appears to the vice-warden that, in consequence of miscarriage, accident or the subsequent discovery of fresh material evidence, such finding ought not to be conclusive.

Proceedings in the court of the vice-warden of the stannaries on proof of debts.

Court to adjust rights of contributories (a).

109. The court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto (b).

(a) See 11 & 12 Vict. c. 45, s. 83; 19 & 20 Vict. c. 47, s. 86.

(b) This means after payment of the debts and liabilities of the company, and all costs, charges and expenses of winding-up. Sect. 102, *ante*, p. 153.

Distribution of surplus funds.

In the proceedings before the master for winding-up an abortive joint-stock company, in which 53,015 shares had been subscribed for, a sum of 23,000*l.* was realized. After two advertisements in the daily papers for scripholders, certificates representing 25,675 shares were produced, 24,870 scrip shares were cancelled by arrangement with the holders, leaving 2,470 scrip shares unaccounted for. It appeared that 23,000*l.* assets of the company remained outstanding. On the application of the official manager, the court authorized him to pay a dividend of 15*s.* per share among the holders of the 25,675 scrip shares; and to pay and distribute future dividends among the holders for the time being of scrip shares, with the sanction of the master, who was to be at liberty from time to time to alter the lists of scripholders. Kindersley, V. C., said, it was not a question who were contributories. Many persons might be entitled to have the funds of a company distributed among them, whilst only a few of that number, possibly only the managing body, might be found liable as contributories. *Re Madrid and Valencia Railway Company, Ex parte Quilter*, 5 De G. & S. 276. As to the winding-up of the last company, see *Ex parte Turner*, 3 De G. & S. 127. Persons having notice of a compromise between the official manager and any contributories must be prompt in taking proceedings to disturb it. A person will not be allowed to remain on the list of contributories so long as he thinks it will be for his benefit to continue there, and then apply for the discharge of his name from the list when he begins to apprehend that it will be prejudicial to him. *Underwood's Case*, 5 De G., M. & G. 700.

Court to order costs (c).

110. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges and expenses incurred in winding-up any company in such order of priority as the court thinks just.

(c) The same in substance as the 87th section, 19 & 20 Vict. c. 47.

111. When the affairs of the company have been completely wound-up, the court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Dissolution of company (a).

(a) The same in substance as the 93rd section, 19 & 20 Vict. c. 47.

112. Any order so made shall be reported by the official liquidator to the registrar, who shall make a minute accordingly in his books of the dissolution of such company.

Registrar to make minute of dissolution of company (b).

(b) See 19 & 20 Vict. c. 47, s. 94.

113. If the official liquidator makes default in reporting to the registrar, in the case of a company being wound-up by the court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

Penalty on not reporting dissolution of company (c).

(c) 20 & 21 Vict. c. 14, s. 20.

114. Any petition for winding-up a company by the court under this act shall constitute a *lis pendens* within the terms of the act passed in the session holden in the second and third years of the reign of her present Majesty, chapter eleven (e), and intituled "An Act for the better Protection of Purchasers against Judgments, Crown Debts, *Lis pendens* and Fiats in Bankruptcy," provided the same is duly registered in manner required by such act concerning suits in equity.

Petition to be *lis pendens* (d).

(d) This section is the same as the 125th section of the 11 & 12 Vict. c. 45.

(e) By 2 & 3 Vict. c. 11, s. 7, no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof, unless and until a memorandum or minute containing the name and the usual or last known place of abode, and the title, trade or profession of the person whose estate is intended to be affected thereby, and the court of equity and the title of the cause or information and the day when the bill or information was filed, shall be left with the senior master of the Court of Common Pleas, who shall forthwith enter the same particulars in a book therein mentioned in alphabetical order, by the name

Purchasers not to be affected by any *lis pendens*, unless such suit is duly registered as directed by act.

of the person whose estate is intended to be affected by such *lis pendens*, and such officer shall be entitled for any such entry to the sum of 2s. 6d.; and the provisions *thereinbefore* contained in regard to the re-entering of judgments every five years, and the fee payable to the officer thereon, shall extend to every case of *lis pendens* which shall be registered under the provisions of that act.

Special case
to be a *lis*
pendens, and
may be re-
registered.

By stat. 13 & 14 Vict. c. 35, s. 17, the filing of a special case under that act (which commenced on the 1st of November, 1850), and the entering of appearances thereto by the persons named as defendants therein, shall be taken to be a *lis pendens*, and may be registered under the provisions of that act, in like manner as any other *lis pendens* in a court of equity might then be so registered, and unless and until so registered, shall not bind a purchaser or mortgagee without express notice thereof.

It seems that, upon filing a bill in equity, there is a *lis pendens* before service of the bill, and that a general administration suit is a *lis pendens* as to lands afterwards sold under the decree in such suit. *Drew v. Earl of Norbury*, 3 Jones & L. 267; see *Kinsman v. Kinsman*, 1 Russ. & My. 617. The doctrine as to the effect of *lis pendens* on the title of a purchaser is not founded on any principles of courts of equity with regard to notice, but on the ground that it is necessary to the administration of justice that the decision of the court in a suit should be binding, not only on the litigant parties, but also on other parties deriving title from them, during the pendency of the suit, whether with notice of such pendency or not. *Bellamy v. Sabine*, 1 De G. & J. 566; see *Culpeper v. Aston*, 2 Ch. C. 115, 221; *Sorrell v. Carpenter*, 2 P. Wms. 482; *Worsley v. Earl of Scarborough*, 3 Atk. 392.

Extraordinary Powers of Court.

115. The court may, after it has made an order for winding-up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the court may deem capable of giving information concerning the trade, dealings, estate or effects of the company; and the court may require any such officer or person to produce any books, papers, deeds, writings or other documents in his custody or power relating to the company (b); and if any person so summoned, after being tendered a reasonable sum for his ex-

Power of
court to
summon
persons
before it sus-
pected of
having pro-
perty of com-
pany (a).

penses, refuses to come before the court at the time appointed, having no lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause such person to be apprehended, and brought before the court for examination; nevertheless, in cases where any person claims any lien on papers, deeds or writings or documents produced by him, such production shall be without prejudice to such lien, and the court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

(a) See 11 & 12 Vict. c. 45, s. 63.

(b) See form of summons under this section, No. 54, *post*.

116. If, after an order for winding-up in the court of the vice-warden of the stannaries, it appears that any person claims property in, or any lien, legal or equitable, upon any of the machinery, materials, ores or effects on the mine or on premises occupied by the company in connexion with the mine, or to which the company was, at the time of the order, *prima facie* entitled, it shall be lawful for the vice-warden or the registrar to adjudicate upon such claim on interpleader in the manner provided by section eleven of the act passed in the eighteenth year of the reign of her present Majesty, chapter thirty-two (c); and any action or issue directed upon such interpleader may, if the vice-warden think fit, be tried in his court or at the assizes or the sittings in London or Middlesex, before a judge of one of the superior courts, in the manner and on the terms and conditions hereinbefore provided in the case of disputed debts and claims of creditors.

Special provisions as to court of vice-warden of the stannaries.

(c) By 18 Vict. c. 32, to amend and extend the Jurisdiction of the Stannary Court, when any claim is made to or in respect of any goods and chattels, or the proceeds or value thereof, sold or intended to be sold under a customary decree of sale in a mining creditors' suit by any landlord for rent or other distrainable demand, or by any other person not being a party to the suit, it shall be lawful for the vice-warden to call upon the claimant, by rule or order of the court, to appear in person or by his attorney or agent in support of the same, either before the vice-warden himself or before the registrar, and

Interpleader in equity.

Proviso.

to state the nature and particulars of his claim, who shall thereupon hear the allegations and receive the proofs offered, as well by the claimant as by the plaintiff in the suit, and if the claimant and plaintiff shall agree on the facts of the case, shall then adjudicate upon the claim, and if the said parties shall not so agree, then the disputed facts shall be ascertained by an action or issue to be tried in the vice-warden's court, in such form as the vice-warden shall direct, and the vice-warden shall then adjudicate upon the claim, and the vice-warden or registrar shall have power, with the consent of the parties so before him, their counsel, attornies or agents, to adjudicate upon and dispose of the claim in a summary manner: provided that, in all cases except in case of summary adjudication by consent, it shall be competent for the registrar, at the request of the said parties or either of them, to refer the decision of the case to the vice-warden, and the vice-warden shall in all cases of such interpleader make such other rules and orders in the matter of the said claim or adjudication as between the said parties in respect thereof, or of the costs of the proceedings, as to him shall seem fit and reasonable. 18 & 19 Vict. c. 32, s. 11.

Examination of parties by court (a).

117. The court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs, dealings, estate or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

(a) This is the same in substance as 19 & 20 Vict. c. 45, s. 78.

Power to arrest contributory about to abscond, or to remove or conceal any of his property (b).

118. The court may, at any time before or after it has made an order for winding-up a company, upon proof being given that there is probable cause for believing that any contributory (c) to such company is about to quit the united kingdom, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, monies, securities for monies, goods and chattels to be seized, and him and them to be safely kept until such time as the court may order.

(b) See 20 & 21 Vict. c. 14, s. 11.

(c) Or alleged contributory, s. 74, *ante*, p. 76.

119. Any powers by this act conferred on the court shall be deemed to be in addition to and not in restriction of any other powers subsisting, either at law or in equity, of instituting proceedings against any contributory or the estate of any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor or his estate, and such proceedings may be instituted accordingly.

Powers of court cumulative.

Enforcement of and Appeal from Orders.

120. All orders made by the Court of Chancery in England or Ireland under this act may be enforced in the same manner in which orders of such Court of Chancery made in any suit pending therein may be enforced, and for the purposes of this part of this act the court of the vice-warden of the stannaries shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the Court of Chancery in England has in relation to matters within the jurisdiction of such court, and for the last-mentioned purposes the jurisdiction of the vice-warden of the stannaries shall be deemed to be co-extensive in local limits with the jurisdiction of the Court of Chancery in England (b).

Power to enforce orders (a).

(a) See the latter part of sect. 60 of 19 & 20 Vict. c. 47.

(b) The mode of enforcing decrees and orders in the Court of Chancery will be found in Smith's Pr. Ct. of Ch. pp. 218—236, 7th ed.; Daniell's Ch. Pr., ch. xxiv. s. 7.

121. Where an order, interlocutor or decree has been made in Scotland for winding-up a company by the court, it shall be competent to the court in Scotland during session, and to the Lord Ordinary on the bills during vacation, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls which they may wish to enforce, and of the amount due by each contributory respectively, and of the date when the same became due, to pronounce

Power to order contributories in Scotland to pay calls (c).

forthwith a decree against such contributories for payment of the sums so certified to be due by each of them respectively, with interest from the said date till payment, at the rate of five pounds per centum per annum, in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay such calls and interest; and such decree may be extracted immediately, and no suspension thereof shall be competent except on caution or consignment, unless with special leave of the court or Lord Ordinary.

(e) This is nearly the same as the 5th section, 21 & 22 Vict. c. 60.

Order made
in England
to be en-
forced in
Ireland and
Scotland (a).

122. Any order made by the court in England for or in the course of the winding-up of a company under this act shall be enforced in Scotland and Ireland in the courts that would respectively have had jurisdiction in respect of such company if the registered office of the company had been situate in Scotland or Ireland, and in the same manner in all respects as if such order had been made by the courts that are hereby required to enforce the same; and in like manner orders, interlocutors and decrees made by the court in Scotland for or in the course of the winding-up of a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding-up a company shall be enforced in England and Scotland by the courts which would respectively have had jurisdiction in the matter of such company if the registered office of the company were situate in the division of the united kingdom where the order is required to be enforced, and in the same manner in all respects as if such order had been made by the court required to enforce the same in the case of a company within its own jurisdiction.

(a) This section is the same in substance as the 12th section, 21 & 22 Vict. c. 60. *

Mode of

123. Where any order, interlocutory or decree

made by one court is required to be enforced by another court, as hereinbefore provided, an office copy of the order, interlocutor or decree so made shall be produced to the proper officer of the court required to enforce the same, and the production of such office copy shall be sufficient evidence of such order, interlocutor or decree having been made, and thereupon such last-mentioned court shall take such steps in the matter as may be requisite for enforcing such order, interlocutor or decree, in the same manner as if it were the order, interlocutor or decree of the court enforcing the same.

dealing with orders to be enforced by other courts (d).

(d) See 21 & 22 Vict. c. 60, s. 13.

124. Rehearings of and appeals from any order or decision made or given in the matter of the winding-up of a company by any court having jurisdiction under this act, may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same court in cases within its ordinary jurisdiction; subject to this restriction, that no such rehearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made (b) in manner in which notices of appeal are ordinarily given, according to the practice of the court appealed from, unless such time is extended by the court of appeal (c): provided that it shall be lawful for the lord warden of the stannaries, by a special or general order, to remit at once any appeal allowed and regularly lodged with him against any order or decision of the vice-warden made in the matter of a winding-up to the court of appeal in chancery, which court shall thereupon hear and determine such appeal, and have power to require all such certificates of the vice-warden, records of proceedings below, documents and papers as the lord warden would or might have required upon the hearing of such appeal, and to exercise all other the jurisdiction and powers of the lord warden

Appeals from orders (a).

specified in the act of parliament passed in the eighteenth year of the reign of her present Majesty, chapter thirty-two, and any order so made by the court of appeal in chancery shall be final, without any further appeal.

(a) See 11 & 12 Vict. c. 45, ss. 101, 102; 12 & 13 Vict. c. 108, s. 33. By the 102nd section of the act 11 & 12 Vict. c. 45, s. 102, there was an appeal to the House of Lords from all orders to be made by the court under that act.

(b) The 33rd section, 12 & 13 Vict. c. 108, which provides that no notice of motion for a re-hearing shall be given after the expiration of three weeks after the order complained of shall have been made, was held to apply to the time at which the order was pronounced by the judge, and not to the time at which the order was drawn up. *Re Risca Coal and Iron Company*, 31 L. J., Ch. 429. That section was retrospective, and where notice of a motion of rehearing of an order made before the passing of that act had not been served within the time limited by that section the court refused to hear the application. *Ex parte Sanderson, Re North of England Joint Stock Banking Company*, 1 Hall & T. 486; 1 Mac. & G. 306.

An order having been made for winding-up a company by consent between the solicitors for the official liquidators, and the petitioners, two contributories, who were not before the court when the order was made, applied after the expiration of twenty-one days from the date of the order, praying that such order might be discharged or varied or the petition itself re-heard: it was held, first, that although the order might have been made by consent, that did not preclude the contributories who were not before the court from the making such application; secondly, that their not being parties to the order formed no objection; thirdly, that the period of twenty-one days did not apply to applications to discharge or vary a winding-up order: and fourthly, that leave was not required for an application to re-hear, vary or discharge an order of this nature. *Re the Anglo Californian Gold Mining Company*, 31 L. J., Ch. 238; 10 W. R. 127.

(c) This part of the section is imperative. *Ex parte Green*, 24 L. J., Ch. 331.

The restriction as to the time of appealing under the Winding-up Act of 1848 does not apply to an appeal from an order on the ground of want of jurisdiction to make it. *Re Plumstead, Woolwich and Charlton Consumers' Pure Water Company*, 2 De G., F. & J. 20; 28 Beav. 545.

A creditors' representative, having been served with a petition of appeal, must be paid his costs by the appellant, who was ordered to pay those of the official manager. *Ex parte Costello, Re Mexican and South American Company*, 30 L. J., Ch. 113—L. J.; see *ante*, pp. 150, 151.

Where a creditors' representative appears on an appeal he is entitled to his costs out of the estate. *Ex parte Budd*, 31 L. J., Ch. 4; 10 W. R. 51—L. J.; see *ante*, p. 149.

125. In all proceedings under this part of this act, all courts, judges and persons judicially acting, and all other officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the Courts of Chancery or Bankruptcy in England or in Ireland, or of the Court of Session in Scotland, or of the registrar of the court of the vice-warden of the stannaries, and also of the official seal or stamp of the several offices of the Courts of Chancery or Bankruptcy in England or Ireland, or of the Court of Sessions in Scotland, or of the court of the vice-warden of the stannaries, when such seal or stamp is appended to or impressed on any document made, issued or signed under the provisions of this part of the act, or any official copy thereof.

Judicial notice to be taken of signature of officers (a).

(a) See 11 & 12 Vict. c. 45, s. 111.

126. The commissioners of the Court of Bankruptcy and the judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and the commissioners of bankrupt and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this act in cases where any company is wound-up in any part of the united kingdom, and it shall be lawful for the court to refer the whole or any part of the examination of any witnesses under this act to any person hereby appointed commissioner, although such commissioner is out of the jurisdiction of the court that made the order or decree for winding-up the company; and every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying and punishing defaults by witnesses, which he might lawfully exercise as a commissioner

Special commissioners for receiving evidence (b).

of the Court of Bankruptcy, judge of a county court, commissioner of bankrupt, assistant barrister or recorder or as a sheriff of a county, have in the matter so referred to him all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the court which made the order for winding-up the company has; and the examination so taken shall be returned or reported to such last-mentioned court in such manner as it directs.

(b) See 19 & 20 Vict. c. 47, s. 101; 12 & 13 Vict. c. 108, s. 20. The 12 & 13 Vict. c. 106, s. 4, provided that nothing therein contained should affect the provisions of the "Joint Stock Companies Winding-up Act, 1848," or any act amending such act, except so far as regarded the abolition of the fiat in bankruptcy and the substitution of a petition for adjudication of bankruptcy.

Court may order the examination of persons in Scotland (a).

127. The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the estate, dealings or affairs of any company in the course of being wound-up, or in regard to the estate, dealings or affairs of any person being a contributory to the company, so far as the company may be interested therein by reason of his being such contributory, and the order or commission to take such examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon such person to appear before him at a time and place to be specified in the summons for examination upon oath as a witness or as a haver, and to produce any books, papers, deeds or documents called for which may be in his possession or power, and the sheriff may take such examination either orally or upon written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with such report the books, papers, deeds or docu-

ments produced, if the originals thereof are required and specified by the order, or otherwise such copies thereof or extracts therefrom, authenticated by the sheriff, as may be necessary ; and in case any person so summoned fails to appear at the time and place specified, or appearing refuses to be examined or to make the production required, the sheriff shall proceed against such person as a witness or haver duly cited, and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland ; and the sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland : if any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required to be made, or on any other ground whatever, the sheriff may, if he thinks fit, report such objection to the court, and suspend the examination of such witness until such objection has been disposed of by the court.

(a) See 12 & 13 Vict. c. 108, s. 21.

128. Any affidavit, affirmation or declaration required to be sworn or made, under the provisions or for the purposes of this part of this act, may be lawfully sworn or made in Great Britain or Ireland, or in any colony, island, plantation or place under the dominion of her Majesty in foreign parts, before any court, judge or person lawfully authorized to take and receive affidavits, affirmations or declarations, or before any of her Majesty's consuls or vice-consuls, in any foreign parts out of her Majesty's dominions, and all courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul or vice-consul attached, ap-

Affidavits, &c. may be sworn in Ireland, Scotland or the colonies before any competent court or person (b).

pending or subscribed to any such affidavit, affirmation or declaration, or to any other document to be used for the purposes of this part of this act.

(b) See 12 & 13 Vict. c. 108, s. 24.

Voluntary Winding-up of Company.

Circum-
stances under
which com-
pany may be
wound-up
volun-
tarily (c).

129. A company under this act may be wound-up voluntarily (d),

- (1.) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound-up voluntarily;
- (2.) Whenever the company has passed a special resolution (e), requiring the company to be wound-up voluntarily;
- (3.) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind-up the same:

For the purposes of this act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution, as hereinbefore defined (f).

(c) See 19 & 20 Vict. c. 47, s. 102, which did not contain pl. 3.

(d) See sects. 79, 80, *ante*, pp. 99, 100. The jurisdiction of the Court of Chancery to adjudicate upon a disputed claim against a company under the operation of a voluntary winding-up remains. *Lowndes v. Garnett, &c. Gold Mining Company (Limited)*, 31 L. J., Ch. 451.

(e) The mode of passing a special resolution is prescribed by the 51st section, *ante*, p. 53.

Where it is the intention to appoint liquidators at the same meeting at which the resolution is passed for winding-up, the

notice of the meeting should specify that such is one of its objects, in order to avoid any question as to the validity of the appointment of the official liquidators. *Anglo-Californian Mining Company v. Lewis*, 6 H. & N. 174; 30 L. J., Exch. 50. See Table A. second schedule to this act, pl. 10, *post*.

(f) See sect. 51, *ante*, p. 53.

130. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up.

Commencement of voluntary winding-up (g).

(g) See 19 & 20 Vict. c. 47, s. 64.

131. Whenever a company is wound-up voluntarily, the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding-up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound-up (i).

Effect of voluntary winding-up on status of company (h).

(h) See 19 & 20 Vict. c. 47, s. 104.

(i) See sects. 142, 143.

132. Notice of any special resolution or extraordinary resolution passed for winding-up a company voluntarily shall be given by advertisement as respects companies registered in England in the London Gazette, as respects companies registered in Scotland in the Edinburgh Gazette, and as respects companies registered in Ireland in the Dublin Gazette.

Notice of resolution to wind-up voluntarily (k).

(k) See 19 & 20 Vict. c. 47, s. 103.

133. The following consequences shall ensue upon the voluntary winding-up of a company:

Consequences of voluntary winding-up (l).

(1.) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless it be otherwise provided by the regula-

- tions of the company, be distributed amongst the members according to their rights and interests in the company ;
- (2.) Liquidators shall be appointed for the purpose of winding-up the affairs of the company and distributing the property ;
 - (3.) The company in general meeting (*m*) shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him (*n*) ;
 - (4.) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him ;
 - (5.) Upon the appointment of liquidators all the power of the directors shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers ;
 - (6.) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them, as may be determined at the time of their appointment, or in default of such determination by any number not less than two ;
 - (7.) The liquidators may, without the sanction of the court, exercise all powers by this act given to the official liquidator (*o*) ;
 - (8.) The liquidators may exercise the powers hereinbefore given to the court of settling the list of contributories of the company, and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories ;
 - (9.) The liquidators may at any time after the passing of the resolution for winding-up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on

the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same;

- (10.) The liquidators shall pay the debts (*p*) of the company, and adjust the rights of the contributories amongst themselves.

(*l*) See 19 & 20 Vict. c. 47, s. 104.

(*m*) A deed of settlement of a company completely registered under 7 & 8 Vict. c. 110, contained a clause, "that no other business shall be transacted at a special general meeting than the business for which it shall have been expressly called." The company was afterwards registered under 19 & 20 Vict. c. 47. After the passing of the act 20 & 21 Vict. c. 14, at a general meeting, it was resolved that the company should be wound-up voluntarily, and liquidators were appointed. The meeting was held in pursuance of the notice, which, however, did not state the intention of the company to appoint liquidators at that meeting. In an action to recover calls made by the liquidators so appointed, it was held, that the clause in the deed applied to a meeting held for the purpose of appointing liquidators, and that no notice of the intention to appoint liquidators having been given, their appointment was invalid. *Anglo-Californian Gold Mining Company v. Lewis*, 6 H. & N. 174; 16 Jur. N. S. 1376; 9 W. R. 126.

(*n*) See sects. 135, 140, 141.

(*o*) See sects. 95, 138, 139, 159, 160.

(*p*) See sect. 95, *ante*, p. 111.

134. Where a company limited by guarantee, and having a capital divided into shares, is being wound-up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by

Effect of winding-up on share capital of company limited by guarantee(*q*).

him, and payable at such time as may be appointed by the liquidators.

(q) See sect. 9, *ante*, p. 17; s. 90, *ante*, p. 109.

Power of company to delegate authority to appoint liquidators.

135. A company about to be wound-up voluntarily, or in the course of being wound-up voluntarily, may, by an extraordinary resolution, delegate (*r*) to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised; and any act done by the creditors, in pursuance of such delegated power, shall have the same effect as if it had been done by the company (*s*).

(*r*) See sects. 140, 141, *post*, p. 176.

Appointment of official liquidators.

(*s*) A voluntary winding-up of a company was proceeding, with the concurrence of a majority of the shareholders, when one of them being dissatisfied presented a winding-up petition. Under the circumstances, the court acting on the 2nd and 3rd sections of the 21 & 22 Vict. c. 60, appointed an official assignee to act as liquidator, chosen under the voluntary winding-up. *Ex parte Turner, Re Llanfyrnach Silver Lead Mining Company*, 9 W. R. 500—Goulburn, Com.

Arrangement when binding on creditors.

136. Any arrangement entered into between a company about to be wound-up voluntarily, or in the course of being wound-up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution (*t*), and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned (*u*).

(*t*) See sect. 129, *ante*, p. 170.

(*u*) Sect. 137.

Power of creditor or contributory to appeal.

137. Any creditor or contributory (*x*) of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such

arrangement (*y*), appeal to the court against such arrangement, and the court may thereupon, as it thinks just, amend, vary or confirm the same (*z*).

(*x*) See sect. 74, *ante*, p. 76, for definition of contributory.

(*y*) These words assume an agreement to have been made, and not merely an entry on the minutes of proceedings.

(*z*) Every application under this section shall be by petition or motion, or, if the judge shall so direct, by summons at chambers. Rule No. 51.

138. Where a company is being wound-up voluntarily the liquidators or any contributory of the company may apply to the court in England, Ireland or Scotland, or to the lord ordinary on the bills in Scotland in time of vacation, to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the court might exercise if the company were being wound-up by the court; and the court or lord ordinary in the case aforesaid, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the court thinks fit, or it may make such other order, interlocutor or decree on such application as the court thinks just (*b*).

Power for liquidators or contributories in voluntary winding-up to apply to court (*a*).

(*a*) See 21 & 22 Vict. c. 60, s. 14.

(*b*) See sect. 137, n. (*z*).

139. Where a company is being wound-up voluntarily the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution (*d*), or for any other purposes they think fit; and in the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commence-

Power of liquidators to call general meeting (*c*).

ment of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.

(c) See 19 & 20 Vict. c. 47, s. 104, pl. 10.

(d) See sect. 129, *ante*, p. 170.

Power to fill up vacancy in liquidators (e).

140. If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors (f), fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the court.

(e) See 21 & 22 Vict. c. 60, s. 15.

(f) See sects. 135, 136, *ante*, p. 174.

Power of court to appoint liquidators.

141. If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the court may, on the application of a contributory (g), appoint a liquidator or liquidators; the court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up (h).

(g) See Rule, No. 51, *post*.

(h) See sects. 135, 136, 137, *ante*, pp. 174, 175.

Liquidators on conclusion of winding-up to make up an account (i).

142. As soon as the affairs of the company are fully wound-up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and

hearing any explanation that may be given by the liquidators: the meeting shall be called by advertisement, specifying the time, place and object of such meeting; and such advertisement shall be published one month at least previously to the meeting, as respects companies registered in England in the London Gazette, and as respects companies registered in Scotland in the Edinburgh Gazette, and as respects companies registered in Ireland in the Dublin Gazette.

(i) See 19 & 20 Vict. c. 47, s. 104, pl. 10.

143. The liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved: if the liquidators make default in making such return to the registrar they shall incur a penalty not exceeding five pounds for every day during which such default continues.

Liquidators to report meeting to registrar (k).

(k) See 19 & 20 Vict. c. 47, s. 104; 20 & 21 Vict. c. 14, s. 20.

144. All costs, charges and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

Costs of voluntary liquidation (l).

(l) See last paragraph of sect. 164 of 19 & 20 Vict. c. 47.

145. The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound-up by the court, if the court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up (m).

Saving of rights of creditors.

(m) See 19 & 20 Vict. c. 47, s. 105.

146. Where a company is in course of being wound-up voluntarily, and proceedings are taken for the purpose of having the same wound-up by the court, the court may, if it thinks fit, notwithstanding—

Power of court to adopt proceedings of voluntary winding-up (n).

standing that it makes an order directing the company to be wound-up by the court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

(*n*) This is similar to part of the 19th section, 20 & 21 Vict. c. 14.

Winding-up subject to the Supervision of the Court.

Power of court, on application, to direct winding-up, subject to supervision (*o*).

147. When a resolution has been passed by a company to wind-up voluntarily, the court may make an order directing that the voluntary winding-up should continue, but subject to such supervision of the court, and with such liberty for creditors, contributories or others to apply to the court, and generally upon such terms and subject to such conditions as the court thinks just (*p*).

(*o*) See the latter part of sect. 19, 20 & 21 Vict. c. 14.

(*p*) See form of order under this section, No. 4, *post*.

Petition for winding-up, subject to supervision (*q*).

148. A petition, praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the court, shall, for the purpose of giving jurisdiction to the court over suits and actions, be deemed to be a petition for winding-up the company by the court (*r*).

(*q*) See 21 & 22 Vict. c. 60, s. 2.

(*r*) See sect. 85, *ante*, p. 105, as to the petition Rules, Nos. 1—5, and form of order under this section, No. 4, *post*.

Court may have regard to wishes of creditors (*s*).

149. The court may, in determining whether a company is to be wound-up altogether by the court or subject to the supervision of the court, in the appointment of liquidator or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held

and regulated in such manner as the court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court: in the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company (*t*).

(*s*) See 21 & 22 Vict. c. 60, s. 2.

(*t*) See sect. 91, *ante*, p. 109; Rule No. 45, as to meetings under this section. The direction of the judge for any meeting of creditors or contributories under this section, and the appointment of a chairman of any such meeting, shall be testified by a memorandum signed by the chief clerk of the judge. Rule No. 47.

150. Where any order is made by the court for a winding-up subject to the supervision of the court, the court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company (*x*): the court may from time to time remove any liquidators so appointed by the court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Power to court to appoint additional liquidators in winding-up subject to supervision (*u*).

(*u*) See 21 & 22 Vict. c. 60, s. 4.

(*x*) See sect. 135, *ante*, p. 174.

151. Where an order is made for a winding-up subject to the supervision of the court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the court, exercise all their powers, without the sanction or intervention of the court, in the same manner as if the company were being wound-up altogether voluntarily (*z*); but, save as aforesaid, any order made by the court for a winding-up, subject to the supervision of the court, shall for all purposes, including the staying of actions, suits and other pro-

Effect of order of court for winding-up subject to supervision (*y*).

ceedings, be deemed to be an order of the court for winding-up the company by the court (*a*), and shall confer full authority on the court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the company altogether by the court; and in the construction of the provisions whereby the court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression official liquidators shall be deemed to mean the liquidators conducting the winding-up, subject to the supervision of the court.

(*y*) See 21 & 22 Vict. c. 60, s. 4.

(*z*) See sect. 133, *ante*, p. 171.

(*a*) See sect. 79, *et seq.*, *ante*, p. 99.

Appointment in certain cases of voluntary liquidators to office of official liquidators (*b*).

152. Where an order has been made for the winding-up of a company subject to the supervision of the court, and such order is afterwards superseded by an order directing the company to be wound-up compulsorily, the court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.

(*b*) This section is in substance the same as the 8th section, 21 & 22 Vict. c. 60.

Supplementary Provisions.

Dispositions after the commencement of the winding-up avoided (*c*).

153. Where any company is being wound-up by the court or subject to the supervision of the court all dispositions of the property, effects and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company made between the commencement of the winding-up and the order for winding-up, shall, unless the court otherwise orders, be void (*d*).

(*c*) See 19 & 20 Vict. c. 47, s. 73.

(*d*) See sects. 163, 164, pp. 187, 188, *post*.

154. Where any company is being wound-up, all books, accounts and documents of the company and of the liquidators shall, as between the contributories of the company, be *primá facie* evidence of the truth of all matters purporting to be therein recorded.

The books of the company to be evidence (e).

(e) This section is the same as the 81st section of 19 & 20 Vict. c. 47.

155. Where any company has been wound-up under this act and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of in the following way; that is to say, where the company has been wound-up by or subject to the supervision of the court, in such way as the court directs, and where the company has been wound-up voluntarily, in such way as the company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution (f), no responsibility shall rest on the company, or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same, or any of them, cannot be made forthcoming to any party or parties claiming to be interested therein.

As to disposal of books, accounts and documents of the company.

(f) See sect. 111, *ante*, p. 159.

156. Where an order has been made for winding-up a company by the court, or subject to the supervision of the court, the court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories, in conformity with the order of the court, but not further or otherwise (h).

Inspection of books (g).

(g) See 21 & 22 Vict. c. 60, s. 7.

(h) See Rule No. 58, *post*.

157. Any person to whom any thing in action belonging to the company is assigned, in pursuance

Power of assignee to sue.

of this act, may bring or defend any action or suit relating to such thing in action in his own name (*i*).

(*i*) It is a well-known rule of law that a *chose in action* cannot in general be assigned so as to vest in the assignee a right of action for it in his own name, but the action must be brought in the assignor's name. See *Graham v. Grace*, 13 Q. B. 548; *Thompson v. Bell*, 3 El. & Bl. 236; *Broom's Maxims*, 421—423, 3rd ed.

Debts of all
descriptions
to be
proved (*k*).

158. In the event of any company being wound-up under this act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value (*l*).

(*k*) See 12 & 13 Vict. c. 106, s. 178. See *Shelford on the Law of Bankruptcy*, pp. 542—546, 3rd ed.

(*l*) As to the proof of debts, see Rules Nos. 20—28, *post*. The value of such debts and claims as may be proved under this section shall, so far as possible, be estimated according to the value thereof at the date of the order to wind-up the company. Rule, No. 25, *post*.

Under the Winding-up Acts, 1848, 1849, the purchaser of an annuity from an insurance company is entitled to prove for the value of the annuity, and the right may be made available without a bill being filed. *Re English and Irish Church and University Life Assurance Society, Hunt's Case*, 11 W. R. 225; see *Evans v. Coventry*, 26 L. J., Ch. 400; 3 Drew. 75; 5 De G., M. & G. 911; 25 L. J., Ch. 489; *King v. Accumulative Society*, 8 C. B., N. S. 152.

Where the secretary of a company, which had no borrowing powers, borrowed monies on behalf of the company, and which were *bonâ fide* employed for the purposes of the company, proof for the amount was allowed against the company, which was in the course of being wound-up. *Electric Telegraph Company of Ireland, Troup's Case*, 7 Jur., N. S. 901; 9 W. R. 878—R.; S. P., *Hoare's Case*, *ib*.

A shareholder in a company advancing money to and for the purposes of the company is entitled to prove against the company on its being wound-up in bankruptcy in respect of such advances, notwithstanding one of the notes given by him as part of such advances had not been paid. *Re Maresfield Patent Gunpowder Company*, 4 L. T., N. S. 30—Fonblanque, Com.

159. The liquidators may, with the sanction of the court, where the company is being wound-up by the court or subject to the supervision of the court, and with the sanction of an extraordinary resolution of the company where the company is being wound-up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

General scheme of liquidation may be sanctioned.

160. The liquidators may, with the sanction of the court (*n*), where the company is being wound-up by the court or subject to the supervision of the court, and with the sanction of an extraordinary resolution (*o*) of the company where the company is being wound-up altogether voluntarily, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding-up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts or liabilities (*p*).

Power to compromise (*m*).

(*m*) See 21 & 22 Vict. c. 60, s. 19.

(*n*) See sect. 129.

(*o*) See Rules Nos. 49, 60—62, *post*.

(*p*) A company was being wound-up compulsorily after an abortive attempt to wind it up voluntarily, and the official liquidators agreed with thirty-five shareholders to compromise

Compromise of claims by official liquidators.

their liability for a fixed sum, those shareholders insisting as a condition, that the data upon which the compromise was founded should not be divulged. The compromise was sworn to be founded upon details of property and circumstances, which if made known would operate detrimentally to the thirty-five shareholders and to the interests of the company. The official liquidators applied to the court to sanction the compromise under that condition, in pursuance of the 19th section of the 21 & 22 Vict. c. 60. Some of the creditors opposed on the ground of the data not being stated, and the application was refused, with costs. *Ex parte Totty, Re Northumberland and Durham District Banking Company*, 29 L. J., Ch. 702; 8 W. R. 624.

The court will not sanction a proposed compromise with an official liquidator, unless sufficient information be afforded of the grounds upon which the compromise is based. *Ex parte Totty*, 1 Dr. & Sm. 273, 6 Jur., N. S. 849. Such a compromise, when approved by a chief clerk, does not require the personal sanction of the judge at chambers to render it binding. But any person who is aggrieved by such compromise has a right to have the matter considered by the judge. *Ex parte Garsten*, 10 W. R. 457.

Power for liquidators to accept shares, &c. as a consideration for sale of property of company (q).

161. Where any company is proposed to be or is in the course of being wound-up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, policies or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound-up, or may enter into any other arrangement whereby the members of the company being wound-up may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of

the company being wound-up; subject to this proviso, that if any member of the company being wound-up, who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer, that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase-money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution: no special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding-up the company, or for appointing liquidators; but if an order be made within a year for winding-up the company by or subject to the supervision of the court, such resolution shall not be of any validity unless it is sanctioned by the court (r).

(q) See 20 & 21 Vict. c. 14, s. 17.

(r) An official manager sold some property, stipulating that the purchaser should accept a conveyance from him without requiring the concurrence of any other person for any purpose whatsoever; but if the purchaser considered the legal estate to be outstanding, and should require a conveyance thereof, he should bear all the expenses. The purchaser was to pay the purchase-money on a day named, at which time the purchase was to be completed: it was held, that the purchaser was bound to pay his purchase-money on having a conveyance of the equitable estate from the official manager, the vendor being bound subsequently to assist in getting in the legal estate at the purchaser's expense. *Sheerness Waterworks Company (Official Manager) v. Polson*, 29 Beav. 70; 30 L. J., Ch. 326; affirmed on appeal, 3 De G., F. & J. 36.

Sales of property by official manager.

Official liquidators of a bank entered into a provisional contract with B. to sell him property belonging to the bank for 16,000*l.* At a meeting before the chief clerk this contract was submitted for the approval of the judge, when it was objected to by the solicitor for the creditors, who stated that C., another purchaser, would give a higher price. At another meeting C. offered 17,600*l.*, and an order was made that on his paying 1,600*l.* into the bank, and engaging to bid 17,600*l.*, the property should be put up to public auction. B. moved to have this order rescinded: it was held, that although the chief clerk was right in not adopting the provisional contract with B., if a larger sum could be obtained, the order for the sale of the property by public auction could not be supported, because it dealt with the property as if sold in a suit. The official liquidators were therefore directed to carry out the contract with C. for 17,600*l.* *Northumberland and Durham District Banking Company*, 9 W. R. 584.

Mode of
determining
price.

162. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of "The Companies Clauses Consolidation Act, 1845 (a)," with respect to the settlement of disputes by arbitration, shall be incorporated with this act; and in the construction of such provisions this act shall be deemed to be the special act, and "the company" shall mean the company that is being wound-up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators if more than one.

(a) With respect to the settlement of disputes by arbitration, it is enacted by 8 & 9 Vict. c. 16, as follows:

Where ques-
tions are to
be deter-
mined by ar-
bitration, ar-
bitrators to
be appointed
within four-
teen days
after notice.

128. When any dispute authorized or directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall

the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

129. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable or refuse or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal or disability as aforesaid.

Vacancy of arbitrator to be supplied.

130. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, or refuse or for seven days neglect to act, they shall forthwith after such death, refusal or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Appointment of umpire.

131. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the Board of Trade, if they think fit, in any case in which a railway company shall be one party to the arbitration, on the application of either party to such arbitration, to appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

Board of trade empowered to appoint an umpire, on neglect of the arbitrators, in case of railway companies.

132. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Power of arbitrators to call for books, &c.

133. Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration to be deter-

Costs to be in the discretion of the arbitrators.

mined by the arbitrators shall be in the discretion of the arbitrators or their umpires, as the case may be.

Submission to arbitration to be made rule of court.

134. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

Certain attachments, sequestrations and executions to be void (a).

163. Where any company is being wound-up by the court or subject to the supervision of the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents (b).

(a) See 19 & 20 Vict. c. 47, s. 80.

By 19 & 20 Vict. c. 47, attachments, sequestrations and executions at any time within three months next before the filing or presentation of the petition for winding-up the company were void.

(b) See sect. 87, *ante*, p. 108, n. (b).

Fraudulent preference (c).

164. Any such conveyance, mortgage, delivery of goods, payment, execution or other act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed, in the event of such company being wound-up under this act, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly (d); and for the purposes of this section the presentation of a petition for winding-up a company shall in the case of a company being wound-up by the court or subject to the supervision of the court, and a resolution for winding-up the company shall in the case of a voluntary winding-up, be deemed to correspond with the act of bankruptcy in the case of an individual trader (e); and any conveyance or assignment made by any company formed under this act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

(c) See s. 76, 19 & 20 Vict. c. 47.

(d) By 12 & 13 Vict. c. 106, s. 133, all payments really and *bonâ fide* made by any bankrupt, or by any person on his behalf, before date of the fiat or the filing of a petition for adjudication of bankruptcy, to any creditor of such bankrupt, and all payments really and *bonâ fide* made to any bankrupt before the date of the fiat or the filing of such petition, and all conveyances by any bankrupt *bonâ fide* made and executed before the date of the fiat or the filing of such petition, and all contracts, dealings and transactions by and with any bankrupt really and *bonâ fide* made and entered into before the date of the fiat or the filing of such petition, and all executions and attachments against the lands and tenements of any bankrupt *bonâ fide* executed by seizure, and all executions and attachments against the goods and chattels of any bankrupt *bonâ fide* executed and levied by seizure and sale before the date of the fiat or the filing of such petition, shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, provided the person so dealing with or paying to or being paid by such bankrupt, or at whose suit or on whose account such execution or attachment shall have been issued, had not, at the time of such payment, conveyance, contract, dealing or transaction, or at the time of so executing or levying such execution or attachment, or at the time of making any sale thereunder, notice of any prior act of bankruptcy by him committed: provided also, that nothing herein contained shall be deemed or taken to give validity to any payment or to any delivery or transfer of any goods or chattels made by any bankrupt, being a fraudulent preference of any creditor of such bankrupt, or to any conveyance or equitable mortgage made or given by any bankrupt by way of fraudulent preference of any creditor of such bankrupt, or to any execution founded on a judgment or a warrant of attorney or *cognovit actionem* or judge's order obtained by consent given by any bankrupt by way of fraudulent preference.

Payments, conveyances, contracts, &c. executions against lands (if executed by seizure), and against goods (if executed by seizure and sale), to be valid, if no notice of prior act of bankruptcy.

But nothing herein to give validity to payments, &c. by way of fraudulent preference.

"A *bonâ fide* payment imports something different from, and additional to, an actual payment; the words *bonâ fide* were inserted by the legislature to raise the question, whether the money had been paid honestly and fairly in the course of an honest transaction." *Per Tindal, C. J., Davis v. Venables*, 3 Bing. N. C. 403. A payment to be *bonâ fide* must be made without the intention of being reclaimed. *Gibson v. Musket*, 4 Man. & G. 160; see *Turquand v. Vanderplank*, 10 Mees. & W. 180; *Cannon v. Denew*, 3 M. & Scott, 761; 10 Bing. 292. The bankrupt, after a secret act of bankruptcy, and within two months before the issuing of a fiat against him, deposited goods with the defendant, in consideration of a present advance of money: it was held, that his assignees might maintain trover for the goods; the transaction, though *bonâ fide*, and without notice of an act of bank-

Protected payments.

ruptcy, not being protected. *Fearnley v. Wright*, 1 Scott, N. R. 657; 6 Bing. N. C. 446; *Wright v. Fearnley*, 5 Bing. N. C. 89. A delivery of goods *bonâ fide* made in part payment of a previous debt, after a secret act of bankruptcy committed by the debtor, was a protected payment. *Cannan v. Wood*, 2 Mees. & W. 465. If payment of a bill was made after an act of bankruptcy, the burthen of showing that it was a *bonâ fide* payment was cast upon the receiver. A trader, in a state of insolvency, and concealing himself from his general creditors, after a secret act of bankruptcy, in part payment of a debt, delivered a bill of exchange to a creditor, who was acquainted with his place of retreat, and with whom he was in friendly communication: it was held, that this was not a protected payment. *Bagnall v. Andrews*, 4 Moore & P. 839; 7 Bing. 217. A payment by a partner, who had committed an act of bankruptcy, of a partnership debt due before the bankruptcy, was not protected. *Craven v. Edmonson*, 6 Bing. 734; 4 M. & P. 623. The payment which is contemplated by the act is by the *bankrupt himself* or his *authorized agent*. Therefore a payment made by a *third person* without the knowledge of the bankrupt, or a payment extorted by compulsion of legal process (by foreign attachment, for example, even after judgment) from a *third person*, who happened to have effects of the bankrupt in his hands at the time, cannot be said to be a payment by the *bankrupt*, or by a person on his behalf, when the bankrupt was not even conscious that his property was in the hands of such third person. *Hovil v. Browning*, 7 East, 154. In order to render a payment to a bankrupt valid, the sale, in respect of which the payment is made, must be a *bonâ fide* sale in the usual course of business. *Devas v. Venables*, 4 Scott, 123; 3 Bing. N. C. 400. It seems that a payment for goods before they are delivered is not in the ordinary course of trade (*per* Bayley, J., 3 B. & C. 416), unless it be founded upon an usage of the trade or a previous bargain. *Bishop v. Crawshaw*, 3 B. & C. 415; 5 Dowl. & R. 279. See *Belton v. Jayer*, 1 Ry. & M. 265; *Cox v. Morgan*, 2 Bos. & P. 398; *Ex parte Farr*, 9 Ves. 515; *Holroyd v. Whitehead*, 3 Camp. 530; *Harwood v. Lomas*, 11 East, 127; *Vernon v. Hall*, 2 T. R. 48; *Tamplin v. Higgins*, 2 Camp. 312. A payment made more in the nature of a general advance to the bankrupt than in payment for any particular goods was not protected. *Crowfoot v. London Dock Company*, 4 Tyrw. 967. If a banker, after notice of an act of bankruptcy by his customer, receive money on his account, and pay his drafts, he is liable to repay the assignees under a fiat afterwards issued. *Vernon v. Hankey*, 2 T. R. 113; *Hammersley v. Purling*, 3 Ves. 757.

A trader committed a secret act of bankruptcy by leaving his house, and, on going away, desired his foreman to carry on the business in his absence. The foreman accordingly continued the business, and received various sums of money

for goods sold and for debts due to his master; he also made several *bonâ fide* payments to creditors for the expenses of housekeeping, and for wages due to himself. Most of these receipts and payments were before the foreman had any notice of the act of bankruptcy. A fiat having been subsequently issued, the assignees sued the foreman in an action for money had and received for the whole amount received by him from the time of the act of bankruptcy to the date of the fiat. It was held, first, that the action was maintainable. *Kynaston v. Crouch*, Law J., 1845, Exch. 324; 9 Jur. 584; 14 Mees. & W. 266. Secondly, that the defendant was not entitled to set off those payments against the assignees. *Ib.* But it seems that, as to the payments made by him before notice of the act of bankruptcy, he might have protected himself by a special plea, founded on the bankrupt acts. It is presumed that no transaction, which is in itself an act of bankruptcy, will be protected by the 133rd sect. of the act 12 & 13 Vict. c. 106. See *Bevan v. Nunn*, 9 Bing. 107; *Hall v. Wallace*, 7 Mees. & W. 356.

An execution against the goods of a bankrupt is valid within the 133rd sect. of the act 12 & 13 Vict. c. 106, when the sheriff executes the bill of sale, notwithstanding it contains a clause of indemnity to the sheriff by the execution creditor, and is not to be executed by the latter until after he has had notice of an act of bankruptcy. Effect of execution.

The sheriff being in possession of the goods of T. under a *fi. fa.*, on the evening of Saturday, the 20th of December, executed a bill of sale of the goods seized to L., the execution creditor, containing the clause of indemnity by L. to the sheriff. T. had previously committed an act of bankruptcy, upon which he was afterwards made a bankrupt. Notice of this act of bankruptcy was sent to L.'s residence, but, in consequence of his absence from home, was not received by him until Saturday; L. did not execute the bill of sale until Monday the 22nd, when the goods were delivered to him: it was held, that the property passed upon the execution of the bill of sale by the sheriff, and that the execution was therefore executed and levied by seizure and sale within the 133rd sect. of the act 12 & 13 Vict. c. 196. *Christie v. Winnington*, 8 Exch. 287; 22 L. J., Exch. 212. See *Murray v. Earl of Stair*, 2 B. & C. 82. Goods seized by a sheriff under a *fi. fa.* were valued and delivered to the execution creditor under a *bonâ fide* purchase by him, but no bill of sale was executed: it was held, that there was a valid sale of the goods. *Hernaman v. Bowker*, 11 Exch. 760.

An execution is *bonâ fide* completed by sale, if there is a bill of sale to the execution creditor to the full value and the amount is actually paid over. *Loader v. Hiscock*, 1 Fost. & F. 132. Where goods are taken in execution upon a judgment obtained in an adverse action before the filing of the petition for adjudication, but not sold until after that period,

the proceeds will belong to the assignees. *Hutton v. Cooper*, 6 Exch. 159; 20 L. J., Exch. 153.

If goods in the possession, order and disposition of a bankrupt at the time of the act of bankruptcy be taken out of his possession by the true owner after such act but before the fiat or petition, without notice of the previous act of bankruptcy, the assignees cannot recover them, this being a transaction with the bankrupt which is protected by the 125th sect. of the act 12 & 13 Vict. c. 106, and an order made by the Court of Bankruptcy under that section, to sell such goods for the benefit of the creditors, is not final or binding against the true owner. *Graham v. Furber*, 14 C. B. 410; 23 L. J., C. P. 51; 18 Jur. 226; 2 Com. Law R. 452; *Ex parte Barlow*, 22 L. J., Bank. 15; *Quartermain v. Bittlestone*, *Ib.*; C. P. 105; 13 C. B. 132.

A trader took possession of goods, under an agreement with the owner that he should keep possession for a twelve-month on payment of a certain sum, but, if the money was not paid on a certain day, the owner should be at liberty to retake them. The goods continued in the possession of the trader until the stipulated time for payment, when, the money not having been paid, the owner sold them after an act of bankruptcy committed by the trader, but before the fiat had issued. This was held to be a protected transaction. *Young v. Hope*, 2 Exch. Rep. 105.

Under 133rd sect. of the act 12 & 13 Vict. c. 106, any act by the owner of goods in the possession of the bankrupt, which if done before the act of bankruptcy would have prevented the application of sect. 125 as to reputed ownership, is a transaction within sect. 133, if done without notice of an act of bankruptcy; as, if the owner demanded from the bankrupt possession of the goods. *Brewin v. Short*, 5 Ell. & Bl. 227; 1 Jur. N. S. 798; 24 L. J., Q. B. 297. But where the owner, knowing that it was intended by the trader to execute an assignment of all his goods for the benefit of his creditors, went to take possession, but found the assignee under the assignment, which was an act of bankruptcy, in possession, and upon stating why he came, was told by the assignee that he was too late, for that the assignee was in possession under the assignment, and the trader afterwards was made bankrupt: this was held not to be within the protection of above sect. 133, nothing appearing before the notice of the assignment beyond an intention to demand the goods, without anything being actually done. *Ib.* Lord Campbell, C. J., observed:—"We cannot adopt such vague language as that 'any attempt to obtain possession would do,' or 'that it is enough if the true owner does all he can to obtain possession,' for the attempt may be frustrated without the true owner having seen the goods or the bankrupt, or any one representing him; and he may have done all he could to obtain possession without having been able to do

anything. But if before the date of the fiat, and before notice of an act of bankruptcy, the true owner had *bonâ fide* demanded possession of the goods, and, communicating with the bankrupt, had done that which would show that the goods did not longer *with his consent and permission* remain in the possession, order and disposition of the bankrupt, we should hold that the title of the true owner would not be defeated by a prior secret act of bankruptcy. But a mere intention to demand the goods and to get possession of them, we hold not to be a 'dealing' or 'transaction' within the meaning of the 133rd section, and we think that nothing beyond an intention to this was proved before notice of the act of bankruptcy. *Ib.* pp. 237, 238.

Neither this act nor the repealed statutes, which render dealings with persons who afterwards become bankrupt valid, notwithstanding previous acts of bankruptcy, protect or assist those who are cognizant of such previous acts of bankruptcy, as against them the title of the assignees by relation to the time of the act of bankruptcy is available. The Gazette is not constructive notice of an act of bankruptcy. 4 B. & Ald. 530. Neither the issuing of a fiat nor the advertisement in the Gazette was notice of an act of bankruptcy. *Hocking v. Acraman*, 12 M. & W. 170. The issuing a commission of bankruptcy was not of itself sufficient notice of an act of bankruptcy to a debtor paying his debt to the bankrupt. *Sowerby v. Brooks*, 4 B. & Ald. 523. The issuing of the fiat was not of itself notice of the act of bankruptcy. *Cannan v. South-Eastern Railway Company*, 7 Exch. 848. Notice to any accredited agent to any body corporate, or public company, is notice to the latter. Notice of an act of bankruptcy means knowledge thereof, or wilfully abstaining from acquiring such knowledge. Where, therefore, notice of an act of bankruptcy was sent by letter to the attorney of the execution creditors: it was held, that they were not affected with such notice by the mere delivery of the letter at the attorney's office, nor until the same had been read, there being nothing to show a wilful abstaining from reading the letters. *Bird v. Bass*, 6 Man. & G. 143; 6 Scott, N. R. 928. Parke, B., held that, unless compelled by authority to decide otherwise, notice of an act is knowledge of it brought home to the mind of the party who is to be affected by it. *Cannan v. South-Eastern Railway Company*, 7 Exch. 853; see *Spratt v. Hobhouse*, 4 Bing. 173. A trader assigned his effects to a trustee, thereby committing an act of bankruptcy. Afterwards a creditor, ignorant of the act of bankruptcy, took in execution the trader's goods comprised in the assignment. The trustee paid off the execution, and took an assignment of the goods from the sheriff. A fiat in bankruptcy having afterwards issued against the trader: it was held, that the execution creditor, who had become assignee of the sheriff, with knowledge of the act of bankruptcy,

Notice of acts of bankruptcy.

was not protected, and that the assignees in the bankruptcy might bring trover against him for the goods. *Fawcett v. Fearne*, 6 Q. B. 20. A notice that a party had executed a conveyance of all his property for the benefit of his creditors is a good notice of an act of bankruptcy. *Lackington v. Elliott*, 8 Scott, N. R. 275. Knowledge by a creditor that a bill of sale comprised all the debtor's property was held sufficient notice to him that it was an act of bankruptcy. *Lindon v. Sharpe*, 7 Scott, N. R. 730. A notice by a bankrupt to an execution creditor that "he had committed several acts of bankruptcy" was held to be a sufficient notice of a prior act of bankruptcy. The notice need not state the nature or particulars of any act of bankruptcy. There are so many different kinds of acts of bankruptcy that it would be almost impossible to state with accuracy what ought to be the form of notice adapted to each act of bankruptcy. *Udal v. Walton*, 14 M. & W. 254; *Ramsey v. Eaton*, 10 M. & W. 22. Notice of a prior act of bankruptcy, served on a clerk of the plaintiff's attorney in the attorney's absence, was not sufficient, until communicated to the attorney, to take an execution out of the protection of the statute. *Pike v. Stephens*, 12 Jur. 746; 17 L. J., Q. B. 282.

Notice to an execution creditor that his debtor had filed a petition for arrangement, under the 76th sect. of the act 12 & 13 Vict. c. 106, is notice of an act of bankruptcy within the 133rd section of the same act, provided an adjudication of bankruptcy was filed within two months after the petition for arrangement was dismissed. *Edwards v. Gabriel*, 7 H. & N. 520; 8 Jur. N. S. 502; 31 L. J., Exch. 113, Exch. Ch.

A letter from the bankrupt to a creditor, saying he had resolved not to open his bank on Monday, is not notice of an act of bankruptcy, but only notice of an intention to commit such an act. *Ex parte Hallifax*, 2 Mont., D. & D. 544.

Notice to a sheriff's officer in possession under a *fi. fa.* of an act of bankruptcy committed by the defendant, is not notice to the execution creditor, although a notice to the creditor of an act of bankruptcy generally, without stating the nature of it, would be sufficient; *Ramsey v. Eaton*, 10 M. & W. 22; 6 Jur. 489; and the fact of an act of bankruptcy committed being communicated to the attorney acting in the cause for the creditor is sufficient, although the fiat has been issued after the writ was lodged with the sheriff. *Rothwell v. Turnbull*, 1 Dowl. N. S. 778; 6 Jur. 691.

Operation of
execution—
Notice of act
of bank-
ruptcy.

A. B., having recovered judgment against C. D., issued execution thereon, and seized his goods under a writ of *fi. fa.* on the 3rd of December, 1851. On the morning of the 5th a notice was given to A. B. by the solicitors of certain of C. D.'s creditors, who afterwards prosecuted a petition in bankruptcy against him. This notice stated that it was given on behalf of several creditors of C. D., that he had committed an act of

bankruptcy, and also that he had, on the 4th (the previous day), executed a conveyance of all his property to trustees, for the benefit of his creditors. On the afternoon of the 5th, the goods which had been taken in execution were sold. The petition in bankruptcy was presented on the 11th of December, and on the following day C. D. was adjudicated a bankrupt. In an action by the assignees of the bankrupt against A. B., to recover the amount of the proceeds of the goods so sold after an act of bankruptcy, and notice under the 133rd section of the 12 & 13 Vict. c. 106: it was held, that the notice was sufficient. *Hope v. Meek*, 10 Exch. 829. Where an act of bankruptcy has been in fact committed, any communication which brings to the knowledge of the execution creditor before the sale the alleged fact, that an act of bankruptcy has been committed in a way which ought to induce him, as a reasonable man, to believe that the notification was true, is a sufficient notice. *Per Parke, B.*; *Hope v. Meek*, 10 Exch. 829; see p. 845. A party to whom a notice of an act of bankruptcy is sent by the post is not to be deemed to have had notice until the day when, in the ordinary course of post, he would receive the letter containing it. *Loader v. Hiscock*, 1 Fost. & F. 132. Evidence that the defendant in an action by assignees was aware that the bankrupt had left his home and place of business in difficulties and contrary to the rules of his employment as post-master, and had not returned, was held evidence of the defendant's knowledge of an act of bankruptcy, by absenting with intent to delay and defeat creditors. *Smith v. Osborn*, 1 Fost. & F. 267.

A *bonâ fide* execution is defeated by bankruptcy, if notice of an act of bankruptcy be served on the plaintiff's attorney at any time, however short, before seizure, though the notice is served in London, and the writ has been sent into the bailiwick in the country. *Pike v. Stephens*, 12 Q. B. 465. But a mere delivery at the attorney's chamber, as in the case of notices in a cause, is not sufficient; and the notice must be served on the attorney himself, or a clerk so far entrusted with the management of his business as to have the power of acting on such a communication in his absence. *Ib.* Therefore, an announcement in bankruptcy, made at the attorney's office to a person who had lodged the writ of execution with the sheriff, but not further described in evidence than as a clerk to the attorney, did not affect the client, the execution creditor. *Ib.*

Notice of
act of bank-
ruptcy.

On the 22nd of November an execution was put into the house of W., a trader at S. W. left his house on the 23rd, and thereby committed an act of bankruptcy. On the 24th, U., an attorney at S., was informed by the attorney of the creditors that W. had committed an act of bankruptcy. On the morning of the 25th U. received a letter from the attorney of the execution creditor, instructing him in the matter,

which, after directing him to get an assignment from the sheriff, ended thus: "You will be good enough to let this have your immediate attention, as if anything is to be done it must be done quickly." After the receipt of this letter, U. was told by the auctioneer that he had received notice that W. had committed an act of bankruptcy. U. sent for the sheriff's officer, who said that he also had received notice. U. nevertheless told the officer to get an assignment to the execution creditor executed by the sheriff, which was accordingly done. On the evening of the 25th U. wrote to the attornies of the execution creditor, saying, "I fear my services have been called in when too late." In an action against the execution creditor by the assignees of W., who had been adjudged a bankrupt, it was held, that the letter of the attornies for the execution creditor constituted U. such an agent of the execution creditor, that notice to him of an act of bankruptcy was notice to the execution creditor, within 12 & 13 Vict. c. 106, s. 133, and that the information U. received and his letter to the attornies for the execution creditor showed that he had notice of an act of bankruptcy before the execution of the assignment. *Brewin v. Briscoe*, 5 Jur. N. S. 1206; 28 L. J., Q. B. 329.

An intimation given by a clerk of a defendant's attorney to a clerk of the plaintiff's attorney, that the defendant has committed an act of bankruptcy, the clerk to whom it is given not being shown to be a managing clerk, or to have communicated the matter to his principal, is not such a notice as will defeat an execution. *Pennell v. Stephens*, 7 C. B. 987; 7 D. & L. 133. It was questioned whether notice to one who is shown to be a managing clerk would suffice. *Ib.* If execution be taken out in the name of two parties jointly interested as co-plaintiffs, and one knows of an act of bankruptcy already committed by the defendant, his knowledge is *prima facie* the knowledge of both; and the execution is not protected, even though the execution be in fact sued out by one party only, of whose knowledge there is no evidence. *Edwards v. Cooper*, 11 Q. B. 33. It seems that even actual ignorance of an act of bankruptcy on the part of one co-plaintiff would not prevent notice to the other from taking effect as notice to both. *Edwards v. Cooper*, 12 Q. B. 38.

Fraudulent preference in contemplation of bankruptcy.

The doctrine of fraudulent preference, which, as Lord Ellenborough has termed it, is an excrescence on the bankrupt law (2 Camp. 168), is of more recent introduction than the general law depending upon the old doctrine of relation to the act of bankruptcy. "Formerly," as observed by that learned judge (1 Stark. 89), "the act of bankruptcy drew the line of separation between that property which might be disposed of by the bankrupt, and that which vested in the assignees. But it occurred to those who presided in the courts, that it was unjust to permit a party on the eve of bankruptcy to make a voluntary disposition of his property in favour of a

particular creditor, leaving the mere husk to the rest; and therefore that a transfer made at such a period, and under such circumstances as evidently showed that it was made in contemplation of bankruptcy, and in order to favour a particular creditor, should be void."

Legal preference is where the property is duly and regularly transferred, because that excludes fraud. *Harman v. Fisher*, Cowp. 123. Lord Mansfield, C. J., said, it never entered into the mind of any judge to say that a man, in contemplation of an act of bankruptcy, could sit down and dispose of all his effects to the use of his *different* creditors, for that would be a fraud upon the statutes of bankruptcy. But if done in a *course of trade*, and not fraudulent, it may be supported. See *Alderson v. Temple*, 4 Burr. 2240; 1 W. Bl. 660. A trader cannot, in *contemplation of bankruptcy*, dispose of his goods of his own accord, without application on the part of the creditor; but it is not sufficient to avoid the delivery of goods by a trader that such delivery be made voluntarily on his part, and that an act of bankruptcy ensues, it must also appear that he had the act of bankruptcy in contemplation at the time of delivery. So if a creditor obtain goods through the urgency of the demand or the fear of prosecution, the proceeding will not be vitiated, whatever may have been in the bankrupt's contemplation. *Hartshorn v. Slodden*, 2 Bos. & P. 584, 585; *Crosby v. Crouch*, 11 East, 256.

To constitute a fraudulent preference two things must concur: first, insolvency in the trader; and, secondly, a voluntary payment or transfer by him. The reason of the rule is, that all the creditors who have trusted to the general credit of the bankrupt should share his property equally. *Hunt v. Mortimer*, 10 B. & C. 44. In order that a payment should constitute a fraudulent preference, it is not necessary that the bankrupt should have intended to benefit the creditor to whom the payment is made, or that the creditor should have derived benefit from such payment. *Marshall v. Lamb*, 1 Dav. & M. 315; 5 Q. B. 115. Therefore, where a bankrupt who, together with his wife, had joined in mortgaging for 740*l.* a sum of 2,000*l.* in the three per cent. reduced annuities, settled to the separate use of the wife, with a power of appointing to the husband for life, and to their children in remainder, paid off the creditor: it was held, that this was a fraudulent preference, although the object of the payment was to redeem the stock and benefit the bankrupt's own family. *Ib.* In an action by assignees to recover money paid by way of fraudulent preference, and in contemplation of bankruptcy, it must be shown that the party paying contemplated an actual bankruptcy; it is not sufficient to show that he knew himself to be in a state of insolvency. *Atkinson v. Brindall*, 2 Bing. N. C. 225; 2 Scott, 369. A party who seeks to avoid a payment or transfer of goods, on the ground that it was volun-

tarily made by a trader in contemplation of bankruptcy, must show, not merely that the trader was insolvent when it was made, but also that he then contemplated bankruptcy. *Morgan v. Brundrett*, 5 B. & Ad. 289. The following acts of traders have been held to be fraudulent preferences: inclosing bills of exchange to a trader the night before the bankrupt absconded. *Harman v. Fisher*, Cowp. 127; see *Wilson v. Balfour*, 2 Camp. 579; by making a pretended sale on the eve of bankruptcy; *Rust v. Cooper*, Cowp. 269; by paying a bill of exchange before it became due; *Singleton v. Butler*, 2 Bos. & P. 283; payment of a debt by cheque may be a fraudulent preference; *Ex parte Simpson*, 1 De Gex, 9. Such payment made without pressure, after a resolution had been come to by the debtors to suspend payment of their debts generally: it was held, under the circumstances of the case, a fraudulent preference, whether the debtors contemplated actual bankruptcy or not. *Ib.*

An innocent purchaser from the fraudulent possessor of goods may acquire an indefeasible title to them, though it is voidable between the original parties. *White v. Garden*, 10 C. B. 919; *Stevenson v. Newnham*, 13 C. B. 285. Therefore, where a transfer had been made before the bankruptcy, and the transferee, after the appointment of assignees, had brought an action for an excessive distress upon the goods made shortly before the bankruptcy, and the jury found that the transfer to the plaintiff was a fraudulent preference, but the assignees had not taken any steps to affect the plaintiff's title: it was held, that the defendant could not set up the title of the assignees against the plaintiff's right to recover. The mere commencement of an action of trover by the assignees against the plaintiff for the conversion of the goods was held no election on the part of the assignees to avoid the transfer. *Stevenson v. Newnham*, 13 C. B. 285; 17 Jur. 600, Exch. Cham.; *S. C.*, 10 C. B. 713. It was also held, that the assignees had a right to disaffirm the fraudulent execution and claim the goods, as the transaction was voidable, but not void; but Erle, J., dissented to the proposition that such disaffirmance had no relation back, and that the goods at the time of the seizure by the defendants and until the assignees assumed their right were the plaintiff's property, and consequently that he was entitled to maintain an action for the illegal taking. *Ib.* Parke, B., observed, "The first question in this case is, whether the receipt of the goods by the plaintiff under the circumstances stated would have been a mere *fraudulent preference* to be treated simply as such in this action, or as an *act of bankruptcy*. The fraudulent delivery of goods, or the causing them to be taken in execution with intent to defeat or delay creditors, is an act of bankruptcy; and if, in this case, the assignees under this fiat could have resorted to such an act of bankruptcy, we should

have thought their title related back to the delivery of the goods, or the fraudulent execution itself, as an act of bankruptcy, and the property in the goods would thereby have been vested in the assignees from that moment, and so the plaintiff would not have been entitled to sue for the sale of or damages to their goods, though he might still, perhaps, have been able to sue for a part of this alleged cause of action—the loss of the temporary possession of the excess more than ought to have been taken as a distress. And if the fiat had been issued on the petition of any of those creditors to whom the bankrupt was indebted at the time of the transfer of the goods to the plaintiff in a sufficient sum to make them good petitioning creditors, the assignees under that fiat would have had a title to the goods by that very transfer.’’ *Stevenson v. Newnham*, 13 C. B. 299.

The defendant’s wife having before her marriage become, as surety, joint and several maker with F. of a promissory note, afterwards, at the suggestion of her husband, applied to F. for money to enable him to take up the note. F., being then insolvent, voluntarily paid the amount of the note to the defendant, in contemplation of bankruptcy, and by way of fraudulent preference. The defendant afterwards paid the money to an indorsee of the note: it was held, that the assignees of F., who afterwards became bankrupt, were entitled to recover the money from the defendant as money had and received to their use, inasmuch as it was money handed over by the bankrupt under such circumstances that it was against the law that he should retain it. *Groom v. Watts*, 4 Exch. 727; 19 L. J., Exch. 154.

The 17 & 18 Vict. c. 36, for the registration of bills of sale has in no degree affected the doctrine of reputed ownership. *Stansfield v. Cubitt*, 2 De G. & J. 222; 1 *Ib.*, Bank. App. 168; 4 Jur. N. S. 395; 27 L. J., Ch. 266. See Shelford on the Law of Bankruptcy, pp. 697—704 (3rd ed.).

In order to render a preference on the eve of bankruptcy valid, it is not necessary that there should be a threat or pressure, with an immediate power of rendering it available by taking legal steps. *Van Castell v. Booker*, 2 Exch. 691; 18 L. J., Exch. 9. To defeat a payment or transfer made to a creditor, the assignees must show it to be fraudulent as against the body of creditors, by proving it to be voluntary on the part of the bankrupt, and in contemplation of his bankruptcy; and if it is made in consequence of the act of the creditor, it is not voluntary. *Ib.* A payment is voluntary when it originates from the bankrupt himself; but if a creditor demands payment, pressure is not necessary on his part to take it out of the class of voluntary payments; 4 Mee. & W. 348. In an action by the assignees of bankrupts to recover back from the defendant, who was a creditor of the bankrupts, the amount of debt paid him by the bankrupts, which the

What amounts to fraudulent preference.

assignees alleged to have been paid by way of fraudulent preference, the judge directed the jury, first, that if the bankrupts were induced to make the payment by pressure of the defendant; secondly, that if they were not influenced by the pressure, but acted voluntarily, and with a view to give a preference to the defendant in the event of a bankruptcy, the verdict should be for the plaintiffs; and, thirdly, that if the payment was made under the influence of the pressure of the defendant, and also with a desire to give a preference to the defendant in the event of a bankruptcy, the verdict should be for the defendant: it was held, that the direction was right; for to constitute a fraudulent preference the payment must be both voluntary and in contemplation of bankruptcy. *Brown v. Kempton*, 19 L. J., C. P. 169, Exch. Ch.

Payment by a trader who contemplates bankruptcy of a debt, not then due, upon a *bonâ fide* request of the creditor, is not in law a voluntary payment, the fact of the debt not being due is merely a circumstance for the jury in considering the question of fraudulent preference. *Strachan v. Barton*, 11 Exch. 647; 24 L. J., Exch. 182.

A trader being indebted to the defendant in 570*l.* upon a balance of accounts for goods, and being pressed for payment, as an inducement for forbearance executed a deed, by which he mortgaged to the defendant the public house in which he carried on his business, and assigned to him his trade and other fixtures, with a covenant for payment with interest by instalments, the period for payment extended over several months, with a proviso that on payment of the instalments the deed was to be void, but on default the defendant might enter and sell. He continued his business, receiving supplies of goods and advances from the defendant and making various payments to creditors, and he then became bankrupt: it was held, that the deed was not void as a fraudulent preference, for even if made in contemplation of bankruptcy it was not voluntary, but procured by pressure on the part of the defendant. *Hall v. Tollnutt*, 18 C. B. 505; 2 Jur. N. S. 904; 25 L. J., C. P. 267.

If the deed had been made with a view to give the defendant a fraudulent preference, the trader being uninfluenced by the pressure, it would have been void notwithstanding the pressure; but, as the pressure exercised some influence on his mind, there was no fraudulent preference. *Ib.*

If a trader on the eve of bankruptcy, yielding to the *bonâ fide* pressure of a creditor, give him a security on part of his property, this is not a fraudulent preference, although both parties may be aware of the impending bankruptcy, but if the debtor, even on pressure, assign the whole of his property to a creditor so as to disable him from continuing to carry on his business, this is a fraudulent preference and invalid against the other creditors upon a bankruptcy. The same

result follows where an exception from the whole property assigned is merely colourable. *Johnson v. Fesenmeyer*, 25 Beav. 88; affirmed on appeal, 3 De G. & J. 13; *Stanger v. Wilkin*, 19 Beav. 626. *Smith v. Tims*, 2 Jur. N. S. 1015.

A bond given in substitution for a voluntary bond is valid, although the obligor was in a state of insolvency when he executed the substituted bond, if the transaction is not tainted with *mala fides* on the part of any of the parties to it. *Ex parte Hookins*, 13 Jur. 114; 18 L. J., Bank. 11; 3 De G. & S. 549.

Whether a payment was made by a party knowing the probability of his becoming a bankrupt, and in order to prefer a particular creditor, is a question of fact for a jury. *Fidgean v. Sharpe*, 5 Taunt. 539; *Flook v. Jones*, 4 Bing. 20; *Gibson v. Boutts*, 3 Scott, 229; 4 Man. & G. 160. Whether or not a voluntary payment made by a trader in insolvent circumstances, and on the verge of bankruptcy, to a particular creditor, is void, as being a fraud upon the bankrupt laws, is a question of fact for the jury, depending upon the mind and intention of the party at the time of making the payment, to be collected from the surrounding circumstances. If his condition and conduct be such as to evince clearly a contemplation on the part of the trader that his embarrassments must of necessity end in bankruptcy, the jury will not be warranted in coming to any other conclusion than that the transaction is fraudulent. But, inasmuch as every man has, down to the time of committing an act of bankruptcy, the sole right of dominion over his property, such a payment cannot be held to be a fraudulent preference, where the bankrupt, at the time of making it, appears to entertain a *bonâ fide* hope or expectation that he may be extricated from his difficulties, without being made a bankrupt. *Gibson v. Boutts*, 3 Scott, 229; *Atkinson v. Brindall*, 2 Bing. N. C. 225. See *Abbott v. Burbage*, 2 Scott, 656; 2 Bing. N. C. 444.

Fraudulent preference a question of fact for a jury.

It has been laid down, that whether or not a payment by a trader is made in contemplation of bankruptcy is so much a question of law, that though two juries have decided it in the negative, the court, if satisfied that their conclusion is erroneous, will send the cause down to a third trial. *Gibson v. Muskett*, 3 Scott, N. R. 427; 4 Man. & G. 160. This doctrine, however, was questioned by Lord Denman, C. J. See *Marshall v. Lamb*, 5 Q. B. 115; *Gibson v. Bruce*, 6 Scott, N. R. 309; 5 Man. & G. 199. A fraudulent preference in contemplation of bankruptcy may be inferred by a jury from circumstances, without proof that a distinct act of bankruptcy was contemplated. *Aldred v. Constable*, 4 Q. B. 674. Where proof was given of the bankrupt having executed the security while in embarrassed circumstances, and under expectation of being imprisoned and compelled to go up to London from the country, where he traded, the judge told the jury that, if

the bankrupt contemplated only insolvency and a discharge by the Insolvent Debtors Court, there was no fraudulent preference in contemplation of bankruptcy: but that was held to be a misdirection. *Aldred v. Constable*, 4 Q. B. 674.

The question of fraudulent preference depends on what passes in the mind of the party making the payments at the time they are made; if he acts in pursuance of a contract or engagement, or otherwise under such circumstances that he cannot have a choice, the payments are evidently not the result of preference. *Vacher v. Cocks*, 1 B. & Ald. 152, per Bayley, J. See Cowp. 117; *Wilson v. Balfour*, 2 Camp. 579; *Gladstone v. Hadwen*, 1 Mau. & S. 517.

A voluntary payment is a payment simply by the act and will of the party making it, and if there is anything to interfere with or control his will, then it is not a voluntary payment. Per Alderson, B., *Strachan v. Barton*, 11 Exch. 650. Payment by a trader, who contemplates bankruptcy, of a debt not then due, upon a *bonâ fide* request of the creditor, is not in law a voluntary payment; the fact of the debt not being due is merely a circumstance for the jury in considering the question of fraudulent preference. *Strachan v. Barton*, 11 Exch. 647.

Apprehension of legal proceedings.

The objection of fraudulent preference does not apply where the act done is occasioned by the threat or even the mistaken apprehension of legal proceedings, whether civil or criminal. *Thompson v. Freeman*, 1 T. R. 155; *De Taste v. Carol*, 1 Stark. 88; or upon the pressure and application of the creditor; *Casser v. Gough*, 1 T. R. 156; *Smith v. Payne*, 6 T. R. 152; *Crossby v. Crouch*, 2 Camp. 165; 11 East, 256. A demand of a debt not yet due has the same effect. *Hartshorn v. Slodden*, 2 Bos. & P. 582. It seems that the return of goods by the hirer to the lender under threat of a fiat in bankruptcy is not a fraudulent preference. *Ex parte Whitby*, Mont. & C. 671. A preference by an insolvent trader to a particular creditor is not fraudulent, if originating *bonâ fide* in the urgency of the creditor. *Morgan v. Brundrett*, 2 Nev. & M. 281; *Reynard v. Robinson*, 3 Moore & S. 127; 9 Bing. 717. To determine whether a fraudulent preference has been given by a bankrupt to one of his creditors by a payment, it will be for the jury to say whether the payment was voluntary, and without any pressure by the creditor, and was made when the debtor knew that he must be a bankrupt, and in contemplation of bankruptcy. In order to constitute "pressure," it is not necessary that legal proceedings should have been resorted to, for if the pressure was such that it overweighed the bankrupt's own inclination, and induced him to pay against his will, that would be sufficient pressure within the meaning of the bankrupt laws. From a person being in embarrassed circumstances, it does not necessarily follow that he contemplates bankruptcy, as he may hope that his affairs may rally

and come round. *Green v. Bradfield*, 1 Car. & Kir. 449. Though there is a desire to favour a particular creditor, yet, if there is pressure the payment or transfer is valid, but it is the province of the jury to decide whether the pressure was real or only colourable. *Graham v. Canely*, 3 F. & F. 206. See *Cook v. Rogers*, 5 Moore & P. 353. In an action by assignees of a bankrupt to recover back money alleged to have been paid by the bankrupt to the defendant by way of fraudulent preference, in contemplation of bankruptcy, the judge, assuming that there had been such a degree of importunity on the part of the creditor as would under ordinary circumstances repel the presumption of the payment being voluntary, left it to the jury to say whether it was made in consequence of that importunity, or with a view to a fraudulent preference of the defendant. It was held that this was a proper direction. *Cook v. Pritchard*, 6 Scott, N. R. 34; 5 Man. & Gr. 329; and see *Pritchard v. Hitchcock*, 6 Scott, N. R. 851. A trader being pressed, conveyed his estates on trusts to sell and pay the pressing creditors, with a further trust to pay debts to certain relatives: the court considered this an undue preference and an act of bankruptcy. *Morgan v. Horseman*, 3 Taunt. 241.

A payment is not voluntary which is made by a bankrupt to a creditor in consideration of the latter relinquishing some right he then possessed, although the creditor may not, previously to relinquishing such right, have stipulated for any payment by the bankrupt. Dea. B. L. 499, 2nd ed.; *Mavor v. Groome*, 1 Bing. 261; *Stevenson v. Wood*, 5 Esp. 200. A trader, engaged in extensive concerns, was in perilous circumstances, and likely to become bankrupt, although not suspected, from January, 1831, to January, 1832, when he actually became bankrupt. Among others he owed his son 12,000*l.*, which debt, upon his son's marriage, was settled on the son's wife. In May, 1831, some of the trader's property in Middlesex was released from mortgage, and the trader, at the request of his son, on the 31st July, 1831, conveyed it to the trustees under his son's marriage settlement, as a security for or in discharge of the debt due from him to his son. The transfer was not registered or otherwise made public till after the trader's bankruptcy. A jury having found that it was not made voluntary by way of fraudulent preference, or in contemplation of bankruptcy, the court refused to grant a new trial. *Belcher v. Prettie*, 19 Bing. 408; 4 M. & Sc. 295. The defendants, bankers, discounted for a customer two bills, one of which was accepted by a third party for B.'s accommodation, and the payment of the other guaranteed by L., due respectively the 8th and 10th January. On the 3rd January, B., who was in a state of insolvency, went to the defendants' banking-house, accompanied by L., and paid into his (B.'s) account with them a sum sufficient to cover the two bills, and

What payments are not voluntary.

then drew and gave to L. two cheques for the amount of the bills, which cheques L. handed over to the defendants in satisfaction of the bills. B. committed an act of bankruptcy on the 9th January. It was held, that this was not a fraudulent preference of the defendants so as to entitle the assignees of B. to maintain an action against them for money had and received, the preference, if any, having been given to L. *Abbott v. Pomfrett*, 1 Sc. 470; 1 Bing. N. C. 462. In an action by assignees of a bankrupt to recover property on the ground of a fraudulent preference, no amount of embarrassment is sufficient to show that it was in contemplation of bankruptcy, if there were also a hope of assistance, but to prove that the transfer is not voluntary, it must appear that there was such pressure as would be likely to cause the bankrupt to make the transfer. *Kinnear v. Johnson*, 2 F. & F. 753. A banking firm was in insolvent circumstances, and about to stop payment; A., a partner in the firm, informed B. of the fact, in order that the private balance of C., B.'s father, might be drawn out of the bank; but desired him not to let it be known to D. (a shareholder in an assurance company, which also had an account with the bank), as he, A., did not wish the directors to know it. C.'s private balance was, in consequence, drawn out the next day. On the evening of that day A. informed D. of the state of the house. D., being a managing director of the insurance company, took measures by which the company's account was drawn out by a cheque upon the bank. Two days afterwards the house stopped. It was held, that this was not a fraudulent preference of the insurance company, but nothing more than ordinary payment on a banker's cheque. *Belcher v. Jones*, 2 Mees. & W. 258; see *Thompson v. Beatson*, 1 Bing. 145; 7 Moore, 548.

Bankers in London, and the London agents of the bankrupts, who were bankers at B., advanced to them 3,000*l.* to meet an expected run on their bank, on a guarantee which was signed on the understanding (of which the London bankers were not aware) that it should not be used unless it could carry them over the crisis. On the day before the expected run one of the bankrupts went with the guarantee to London, and received the 3,000*l.* from the London bankers in notes and gold, placed in a box. On his return to B., on the same night, he ascertained from his partner that it was hopeless to expect to meet the run, and before they opened the box they discussed the propriety of returning the 3,000*l.* During the discussion a letter was received from one of the guarantors, begging the bankrupts not to make use of the 3,000*l.*, and saying that they could not do so honorably. That letter, according to the evidence of one of the bankrupts, strengthened his own opinion, and they then determined to return the 3,000*l.*, and to suspend payment next morning.

The firm was then insolvent. Afterwards the bankrupts saw the same guarantor, who told them that they could not use the 3,000*l.* with honor, and pressed on them the necessity of returning the money. On the following day the bankrupts returned the box to the London bankers unopened, and suspended payment. In an action by the assignees to recover the 3,000*l.* from the London bankers: it was held, that the pressure of the guarantors, who had an interest in having the money returned, would be sufficient to prevent the repayment from being voluntary, and that there was a pressure from the guarantors which operated on the minds of the bankrupts and induced them to return the money, and therefore the payment was not a fraudulent preference. *Edwards v. Glynn*, 5 Jur. N. S. 1397; 28 L. J., Q. B. 350. It was held also (by Erle and Crompton, Js.), that the money having been advanced for a special purpose, which had failed, the guarantors had an equitable right to the return of the money; and that the bankrupts therefore had not an equitable and a legal title to the money, and consequently the property in it did not pass to the assignees. *Ib.*

A trader, being indebted to his bankers, gave them a receipt for 1,000*l.*, purporting to be in full for the purchase of the furniture, plate, wines and effects in his house; but no possession was given of the goods till a year afterwards, when the trader's solicitor applied to the bankers on his behalf for a loan of 10,000*l.*, stating that a creditor of the trader would obtain judgment, on which he could issue execution, but that, if this creditor refused to give the trader time, the bankrupt would protect himself and his other creditors. The day after this communication, and in consequence of it, the bankers sent a man to take possession, which was delivered to him by the trader, who on the same day filed a declaration of insolvency, and sued out a fiat against himself: it was held, that the delivery of possession was not a fraudulent preference. *Ex parte Majoribanks and others*, 1 De Gex, 466.

The court will not interfere in making an order for the sale of mortgaged property where the circumstances are suspicious as to the mortgage being a fraudulent preference; *Ex parte Dewdney, re Davy*, 4 Dea. & C. 181; 2 Mont. & A. 72. Where it appeared on the face of the petition of an equitable mortgagee that the deposit of the deeds took place only nine days before the issuing of the fiat, and there was nothing to rebut the presumption of fraudulent preference, the court would not make the usual order for sale of the property, but directed it to be sold and the proceeds paid into court, subject to further order. *Ex parte Ainsworth, re Walker*, 2 Dea. 563. Where, at the time of a fraudulent preference, the bankrupt was a trader, and there remained due a debt which was then owing, and which would support a creditors' fiat, it seems that such fraudulent preference may be impeached under the bankrupt's

own fiat: it was held, that such a fraudulent preference did not of itself constitute a sufficient ground for annulling such a fiat against the bankrupt's consent, at the instance of a creditor, who proposed to sue out a fresh fiat, especially if there be any doubt as to the competency of such creditor to sue out a fresh fiat. *Ex parte Norton, re Robinson*, 1 De Gex, 504; see *Stevenson v. Newnham*, 13 C. B. 301.

A trader was entitled to leaseholds, subject to an annuity for lives granted to an insurance company, who, at the instance of the trader and on his representation that he was in failing circumstances, agreed to release it for less than its estimated value. The trader's solicitor afterwards wrote to the company, stating that difficulties had been met with in attempting to sell the leaseholds by reason of a mortgage, and proposing that the annuity should be sold at the reduced price to an auctioneer who had acted for the trader in attempting to sell the property (at a loss to himself), and who would be "still able to serve the trader in some degree." The company assented, provided the trader signed a written consent. This was done, and the annuity was assigned absolutely to the auctioneer. The trader immediately afterwards became bankrupt. It was held, that the creditors were entitled to the benefit of the purchase on repayment to the auctioneer of the purchase-money and interest, and the latter was ordered to pay the costs of the assignees in a suit instituted by them, in which he insisted that he was entitled to retain the purchase for his own benefit. *Baskett v. Cafe*, 4 De G. & S. 388.

A tenant for life and his son, who was tenant in tail male in remainder, joined in recovery deeds purporting to assure the entailed property to the use of trustees for a term of years in trust to pay off certain mortgage debts, with remainder to the use of the son during the life of the father, with remainder to the use of the father's wife for life, with remainder to the use of the son for life, with remainder to the use of the sons of the son successively in tail, with remainder to the use of his daughters in tail, with an ultimate remainder to the use of the father in fee. The father executed these deeds with intent to defraud his creditors, but that object was concealed from the son. The father became bankrupt, and the deeds, at the suit of his assignees, were ordered to be delivered up and cancelled. It was held, in a subsequent suit of a grandson (tenant in tail under the recovery deeds), that the deeds were not only void as against the creditors, but that the grandson had no equity as against a purchaser from the son to have the trusts of the term performed. *Tarleton v. Liddell*, 4 De G. & S. 538; see Shelford on the Law of Bankruptcy, pp. 314—333 (3rd ed.).

(e) As to acts of bankruptcy, see Shelford on the Law of Bankruptcy, pp. 126, 176 (3rd ed.).

165. Where, in the course of the winding-up of any company under this act, it appears that any past or present director, manager, official or other liquidator, or any officer of such company, has misapplied or retained in his own hands or become liable or accountable for any monies of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible (*f*), examine into the conduct of such director, manager or other officer, and compel him to repay any monies so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust, as the court thinks just.

Power of court to assess damages against delinquent directors and officers.

(*f*) See the provisions in 24 & 25 Vict. c. 96, ss. 81—87, *post*.

166. If any director, officer or contributory of any company wound-up under this act destroys, mutilates, alters or falsifies any books, papers, writings or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or other document belonging to the company with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanor, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour (*b*).

Penalty on falsification of books (*a*).

(*a*) See 19 & 20 Vict. c. 47, s. 79.

(*b*) The guilt of felony and the liability to the punishment upon conviction, at the discretion of the court, by penal servitude for life or for any term not less than three years, or to imprisonment for any term not exceeding two years, with or without hard labour and with or without solitary confinement,

Forgery of transfer of shares, how punishable.

are incurred by the following offences, viz.: forging, altering or uttering any transfer or any forged or altered power of attorney for the transfer of any share or interest of or in the capital stock of any body corporate, company or society established by charter or under any act of parliament; by personating the owner of any such share or interest, and transferring or receiving, or endeavouring to transfer or receive, the dividends thereof. 24 & 25 Vict. c. 98, ss. 2, 3.

Whosoever forges the attestation of any power of attorney for the transfer of any such share or interest in any such stock as are before mentioned, or receives the dividends thereon under such forged power, or utters any such forged power of attorney, is guilty of felony, and liable to penal servitude for any term not exceeding seven years and not less than three years, or to imprisonment for any term not exceeding two years, with or without hard labour and with or without solitary confinement. *Ib.*, s. 4.

Prosecution
of delinquent
directors in
the case of
winding-up
by court (a).

167. Where any order is made for winding-up a company by the court or subject to the supervision of the court, if it appear in the course of such winding-up that any past or present director, manager, officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidators, or the liquidators, (as the case may be,) to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company (b).

(a) See 21 & 22 Vict. c. 60, s. 20.

(b) Every application under this section shall be by petition. Rule, No. 51, *post*.

Prosecution
of delinquent
directors, &c.
in case of
voluntary
winding-
up (c).

168. Where a company is being wound-up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the court, to prosecute such offender, and all expenses properly incurred by

them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities (*d*).

(*c*) See 21 & 22 Vict. c. 60, s. 21.

(*d*) See s. 167, n. (*b*).

169. If any person, upon any examination upon oath or affirmation authorized under this act, or in any affidavit, deposition or solemn affirmation in or about the winding-up of any company under this act, or otherwise in or about any matter arising under this act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

Penalty of perjury (*e*).

(*e*) See 21 & 22 Vict. c. 60, s. 21.

Power of Courts to make Rules (f).

170. In England the lord chancellor of Great Britain, with the advice and consent of the master of the rolls and any one of the vice-chancellors for the time being, or with the advice and consent of any two of the vice-chancellors, may, as often as circumstances require, make such rules concerning the mode of proceeding to be had for winding-up a company in the Court of Chancery as may from time to time seem necessary, but until such rules are made the general practice of the Court of Chancery, including the practice hitherto in use in winding-up companies, shall, so far as the same is applicable and not inconsistent with this act, apply to all proceedings for winding-up a company (*h*).

Power of lord chancellor of Great Britain to make rules (*g*).

(*f*) See the rules made in pursuance of this act, *post*.

(*g*) See 19 & 20 Vict. c. 47, s. 95.

(*h*) Rules have been promulgated under this section, see *post*, and Rule No. 74, as to the general practice of the court; such rules apply only to proceedings under this act. Rule No. 75.

171. In Scotland the Court of Session may make such rules concerning the mode of winding-up as may be necessary by act of sederunt; but, until such rules are made, the general practice of the

Power of court of session in Scotland to make rules (*a*).

Court of Session in suits pending in such court shall, so far as the same is applicable, and not inconsistent with this act, apply to all proceedings for winding-up a company, and official liquidators shall in all respects be considered as possessing the same powers as any trustee on a bankrupt estate.

(a) See 19 & 20 Vict. c. 47, s. 97.

Power to
make rules
in stannaries
court (b).

172. The vice-warden of the stannaries may from time to time, with the consent provided for by section twenty-three of the act of eighteenth of Victoria, chapter thirty-two (c), make rules for carrying into effect the powers conferred by this act upon the court of the vice-warden, but, subject to such rules, the general practice of the said court and of the registrar's office in the said court, including the present practice of the said court in winding-up companies, may be applied to all proceedings under this act; the said vice-warden may likewise, with the same consent, make from time to time rules for specifying the fees to be taken in his said court in proceedings under this act; and any rules so made shall be of the same force as if they had been enacted in the body of this act; and the fees paid in respect of proceeding taken under this act, including fees taken under "The Joint Stock Companies Act, 1856," in the matter of winding-up companies, shall be applied exclusively towards payment of such additional officers, or such increase of the salaries of existing officers, or pensions to retired officers, or such other needful expenses of the court as the lord warden of the stannaries shall from time to time, on the application of the vice-warden or otherwise, think fit to direct, sanction or assign, and meanwhile shall be kept as a separate fund apart from the ordinary fees of the court arising from other business, to await such direction and order of the lord warden herein, and to accumulate by investment in government securities until the whole shall have been so appropriated.

(b) See 19 & 20 Vict. c. 47, s. 98.

(c) Whereas the power of the vice-warden to make general rules or orders of court is insufficient, and it is doubtful whether it extends to the adoption of improvements in the procedure of the superior courts recently made by parliament, or of rules and orders made from time to time by the superior courts by the authority of parliament: Be it therefore enacted, that it shall be lawful for the vice-warden to make from time to time new rules and orders touching the procedure, practice, pleadings, regulation of court fees and taxation of costs, both on the common law and equity side of the said court, and all other business of the said court, and to prescribe forms for carrying into effect such new rules and orders, and also existing rules and orders not varied or repealed, and also to adopt all or any of the provisions contained in the act 15 & 16 Vict. c. 86, and in the Common Law Procedure Act, 1852, and in the Common Law Procedure Act, 1854, and all or any of the rules and orders from time to time made and promulgated by the superior courts by and under the authority of the said acts or otherwise, with such modifications as may be necessary to adapt them to the jurisdiction of the vice-warden's court, provided that no such rules, orders, forms or provisions shall be made, prescribed or adopted without the consent and approval of one of the judges of the superior courts of common law at Westminster, in the case of rules, forms and provisions applicable to the common law side of the said court or of the Lord Chancellor or one of the judges of the High Court of Chancery, in the case of orders, forms and provisions applicable to the equity side of the said court: provided also, that nothing herein contained shall be construed to abridge or restrain any existing power of the vice-warden to make rules or orders in cases not requiring the consent or approval of any judge of the superior courts. 18 & 19 Vict. c. 32, s. 23.

Power to make or adopt rules, orders and practice of superior courts of law or equity.

173. In Ireland the lord chancellor of Ireland may, as respects the winding-up of companies in Ireland, with the advice and consent of the master of the rolls in Ireland, exercise the same power of making rules as is by this act hereinbefore given to the lord chancellor of Great Britain (b); but until such rules are made the general practice of the court of chancery in Ireland, including the practice hitherto in use in Ireland in winding-up companies, shall, so far as the same is applicable and not inconsistent with this act, apply to all proceedings for winding-up a company.

Power of lord chancellor of Ireland to make rules (a).

(a) See 19 & 20 Vict. c. 47, s. 96.

(b) *Ante*, s. 170, p. 209.

PART V.

REGISTRATION OFFICE.

Constitution
of registra-
tion office(a).

174. The registration of companies under this act shall be conducted as follows, (that is to say,)

- (1.) The board of trade may from time to time appoint such registrars, assistant registrars, clerks and servants as they may think necessary for the registration of companies under this act, and remove them at pleasure;
- (2.) The board of trade may make such regulations as they think fit with respect to the duties to be performed by any such registrars, assistant registrars, clerks and servants as aforesaid;
- (3.) The board of trade may from time to time determine the places at which offices for the registration of companies are to be established, so that there be at all times maintained in each of the three parts of the United Kingdom at least one such office, and that no company shall be registered except at an office within that part of the United Kingdom in which by the memorandum of association the registered office of the company is declared to be established; [and the board may require that the registrar's office of the court of the vice-warden of the stannaries shall be one of the offices for the registration of companies formed for working mines within the jurisdiction of the court];
- (4.) The board of trade may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies;
- (5.) Every person may inspect the documents kept by the registrar of joint-stock com-

panies; and there shall be paid for such inspection such fees as may be appointed by the board of trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar; and there shall be paid for such certificate of incorporation, certified copy or extract such fees as the board of trade may appoint, not exceeding five shillings for the certificate of incorporation, and not exceeding sixpence for each folio of such copy or extract, or in Scotland for each sheet of two hundred words (*b*);

- (6.) The existing registrar, assistant registrars, clerks and other officers and servants in the office for the registration of joint-stock companies shall, during the pleasure of the board of trade, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the board of trade;
- (7.) There shall be paid to any registrar, assistant registrar, clerk or servant that may hereafter be employed in the registration of joint-stock companies such salary as the board of trade may, with the sanction of the commissioners of the treasury, direct;
- (8.) Whenever any act is herein directed to be done to or by the registrar of joint-stock companies, such act shall, until the board of trade otherwise directs, be done in England to or by the existing registrar of joint-stock companies, or in his absence to or by such person as the board of trade may for the time being authorize; in

Scotland to or by the existing registrar of joint-stock companies in Scotland; and in Ireland to or by the existing assistant registrar of joint-stock companies for Ireland, or by such person as the board of trade may for the time being authorize in Scotland or Ireland in the absence of the registrar; but in the event of the board of trade altering the constitution of the existing registry office, such act shall be done to or by such officer or officers and at such place or places with reference to the local situation of the registered offices of the companies to be registered as the board of trade may appoint.

(a) See 19 & 20 Vict. c. 47, s. 106. The words in brackets in pl. 3 are new.

(b) The 32nd section, *ante*, p. 37, contains provisions as to the inspection of the register of shareholders. The 43rd section, *ante*, p. 49, for the inspection of the register of mortgages. The 56th section, *ante*, p. 66, for the inspection of books and papers by creditors or contributories. By 14 & 15 Vict. c. 99, s. 6, in any action pending in the superior courts, the court and the judges thereof respectively may, on application of either of the litigants, compel the opposite party to inspect all documents in the custody or under the control of such opposite party relating to such action or other proceeding, and, if necessary, to take examined copies of the same or to procure the same to be duly stamped in all cases in which previous to the 7th August, 1851, a discovery might have been obtained by a bill or by any other proceeding in a court of equity, at the instance of the party making application to the court or judge.

The Court of Queen's Bench has no power to grant a rule to inspect documents of a corporation when no cause or proceeding in court has been commenced. *Re Burton and Saddlers' Company*, 31 L. J., Q. B. 62.

In an action against a joint stock company the court or judge may order one of the late directors (the company having ceased to carry on business) to allow the plaintiff inspection of documents not denied by such director to be in his possession or under his control. *Lacharme v. The Quartz Rock Mariposa Mining Company*, 31 L. J., Exch. 335.

An order having been obtained by the plaintiff against a director of the defendant's company, to give inspection of certain documents to the plaintiff, inspection not having been

given a rule nisi for an attachment was moved for, and on cause being shown the director made an affidavit, stating "that he had not at the time the order was made, nor had he at any time since, in his possession, custody or power any of the documents mentioned in the order:" it was held, that the affidavit was insufficient, as it did not state any facts showing that the director had no knowledge in whose control the documents were. *S. C.*, 31 L. J., Exch. 508.

The Court of Chancery, upon the application of the plaintiff in any suit commenced by bill, whether the defendant may or may not have been required to answer the bill, or may or may not have been interrogated as to the possession of documents, may make an order for the production by any defendant upon oath of such of the documents in his possession or power relating to matters in question in the suit as the court shall think right, and the court may deal with such documents when produced in such manner as shall appear just. 15 & 16 Vict. c. 86, s. 18.

In *Law v. The London Indisputable Policy Company*, 10 Hare, App. 20, a question was raised whether a company or corporation answering under their common seal were a defendant within that section; see, however, *Ranger v. Great Western Railway Company*, where the affidavit as to documents was directed to be made by one of the company's officers; 4 De G. & J. 74; 7 W. R. 426; 28 L. J., Ch. 741; 5 Jur. N. S. 1191. It had been previously held, that the production of documents upon oath could not be obtained from the secretary of a company who was not himself a party to the suit. *Attorney-General v. East Dereham Corn Exchange Company*, 5 W. R. 486; the proper course in such a case being to make the secretary a defendant. *Ib.*; see further, *Chaffers v. Woolmer*, 30 L. T. 126, and *Gaskell v. Chambers*, 28 L. J., Ch. 388; 26 Beav. 303. Where the clerk of a company stated in his affidavit that all the documents were in the possession of the warden, and that he could not inspect them without the warden's permission: V. C. Wood held, that the affidavit was insufficient. *Attorney General v. Warden of Merchants' Company*, 9 W. R. 83; see Morgan's Ch. Acts, p. 169 3rd ed.

Upon a bill filed against three directors (who had also been treasurers and trustees of a public company, but had ceased to be so before the motion for production), it was held, that the defendants would not be compelled to produce documents which were not in their exclusive possession, but only in their possession jointly with the other directors. *Penney v. Goode*, 1 Drew. 474; 22 L. J., Ch. 371; *Taylor v. Rundell*, Cr. & Ph. 104.

The act 19 & 20 Vict. c. 47, s. 106, pl. 5, contained the words "and such certified copy shall be *primâ facie* evidence of the matters therein contained in all legal proceedings whatever."

Court or judge may order defendant to produce documents, &c. on oath.

Production by company.

Directors of companies.

Certain documents to be received in evidence without proof of seal or signature, &c. of person signing the same.

By statute 8 & 9 Vict. c. 113, s. 1, whenever by any act then in force or thereafter to be in force any certificate, official or public document, or document or proceeding of any corporation or joint stock or other company, or any certified copy of any document, bye-law, entry in any registry or other book, or of any other proceeding, shall be receivable in evidence of any particular in any court of justice, or before any legal tribunal, or either house of parliament, or any committee of either house, or in any judicial proceeding, the same shall respectively be admitted in evidence, provided they respectively purport to be sealed or impressed with a seal, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed by the respective acts made or to be thereafter made, without any proof of the seal or stamp, where a seal or stamp is necessary, or of the signature or of the official character of the person appearing to have signed the same, and without any further proof thereof, in every case in which the original record could have been received in evidence. See 14 & 15 Vict. c. 99, s. 9, as to Ireland. Documents admissible in Ireland without proof of seal are admissible in England and Wales. *Ib.*, s. 10.

Documents admissible without proof of seal, &c. in England, Wales or Ireland equally admissible in the colonies.

Every document which by any law then in force, or thereafter to be in force, is or shall be admissible in evidence of any particular in any court of justice in England or Wales or Ireland without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence to the same extent and for the same purposes in any court of justice of any of the British colonies or before any person having in any of such colonies by law, or by consent of parties, authority to hear, receive and examine evidence, without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same. 14 & 15 Vict. c. 99, s. 11.

The registers of British vessels and certificates of registry are admissible as *primâ facie* evidence of their contents without proof of signature, &c. *Ib.*, s. 12.

Examined or certified copies of documents admissible in evidence.

Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any court of justice, or before any person now or hereafter having by law or by consent of parties authority to hear, receive and examine evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted, and which officer is hereby required to furnish such certified copy or extract to any person applying

at a reasonable time for the same upon payment of a reasonable sum for the same not exceeding fourpence for every folio of ninety words. *Ib.*, s. 14; see *Re Hall's Estate*, 2 De G., M. & G. 748; 9 Hare (App.), xvi.; 17 Jur. 29; 22 L. J., Ch. 177; *Reed v. Lamb*, 6 Jur. N. S. 828; 29 L. J., Exch. 452; *Ratcliff v. Ratcliff*, 5 Jur. N. S. 714; 29 L. J., Mat. C. 171; *Beatson v. Skene*, 6 Jur. N. S. 780; 29 L. J., Exch. 430.

See act 19 & 20 Vict. c. 113, to provide for taking evidence in her Majesty's dominions in relation to civil and criminal matters pending before foreign tribunals.

If any person shall forge the seal, stamp or signature of any such certificate, official or public document, or document or proceeding of any corporation or joint stock or other company, or of any certified copy of any document, bye law, entry in any register or other book, or other proceeding as aforesaid, or shall tender in evidence any such certificate, official or public document, or document or proceeding of any corporation or joint stock or other company, or any certified copy of any document, bye law, entry in any register or other book, or of any other proceeding, with a false or counterfeit seal, stamp or signature thereto, knowing the same to be false or counterfeit, whether such seal, stamp or signature be those of or relating to any corporation or company then established, or to any corporation or company to be thereafter established, every such person shall be guilty of felony, and shall upon conviction be liable to transportation for seven years, or to imprisonment for any term not more than three nor less than one year, with hard labour; 8 & 9 Vict. c. 113, s. 4. Any person is liable to the same punishment who shall forge the seal, stamp or signature of any document referred to in the act 14 & 15 Vict. c. 99, or shall tender in evidence any such document, with a false or counterfeit seal, stamp or signature thereto; any such document, when received in evidence, may be impounded by the court. 14 & 15 Vict. c. 99, s. 17.

Persons forging seal, stamp or signature of certain documents, guilty of felony.

Felonies under 14 & 15 Vict. c. 99, and 8 & 9 Vict. c. 113, may be tried in the place in which the party charged shall be apprehended or in custody; every accessory to such offence may be tried in any place in which the principal may be tried. 14 & 15 Vict. c. 99, s. 17. This act does not extend to Scotland. *Ib.*, s. 18.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT STOCK COMPANIES ACTS.

175. The expression "Joint Stock Companies Acts" as used in this act shall mean "The Joint

Definition of joint-stock companies acts.

Stock Companies Act, 1856," "The Joint Stock Companies Acts, 1856, 1857," "The Joint Stock Banking Companies Act, 1857," and "The Act to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability," (a) or any one or more of such acts, as the case may require; but shall not include the act passed in the eighth year of the reign of her present Majesty, chapter one hundred and ten, and intituled "An Act for the Registration, Incorporation and Regulation of Joint Stock Companies."

(a) These statutes are 19 & 20 Vict. c. 47; 20 & 21 Vict. c. 14; 20 & 21 Vict. c. 49, and 21 & 22 Vict. c. 91.

Application
of act to
companies
formed under
joint-stock
companies
acts.

176. Subject as hereinafter mentioned, this act, with the exception of Table (A.) in the first schedule, shall apply to companies formed and registered under the said Joint Stock Companies Acts, or any of them, in the same manner in the case of a limited company as if such company had been formed and registered under this act as a company limited by shares, and in the case of a company other than a limited company as if such company had been formed and registered as an unlimited company under this act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Joint Stock Companies Acts or any of them, and the power of altering regulations by special resolution given by this act shall, in the case of any company formed and registered under the said Joint Stock Companies Acts or any of them, extend to altering any provisions contained in the Table marked (B.) annexed to "The Joint Stock Companies Act, 1856," and shall also in the case of an unlimited company formed and registered as last aforesaid extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the memorandum of association.

177. This act shall apply to companies registered but not formed under the said Joint Stock Companies Acts or any of them in the same manner as it is hereinafter declared (b) to apply to companies registered but not formed under this act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Joint Stock Companies Acts or any of them.

Application of act to companies registered under joint-stock companies acts.

(b) See part vii. *post*.

The number of companies which have been established is very numerous, and of these a considerable number has been dissolved or ceased to be in operation. See Parliamentary Paper, No. 58, Sess. 1862, pp. 1—71, which is a return of the names, objects, places where business is or was conducted and date of registration of all joint stock companies (limited), formed since the passing of the act 18 & 19 Vict. c. 133, stating also the nominal capital, the capital paid up, date and nature of the last return to the registration office, &c.; and such paper is a like return of joint stock companies (limited), formed since the passing of the act 21 & 22 Vict. c. 91 (in continuation of Parliamentary Paper, No. 188, of Sess. 2, 1859).

Return as to companies.

The same return contains the names of numerous companies included in the previous return as companies then in operation or not known to be in operation which have been dissolved, or have ceased to carry on business, or have been ascertained since the date of the return to be no longer in operation.

See return of all joint stock companies registered under 7 & 8 Vict. c. 110, Sess. 1845, No. 577.

178. Any company registered under the said Joint Stock Companies Acts or any of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

Mode of transferring shares.

PART VII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

179. The following regulations shall be observed with respect to the registration of companies under this part of this act, (that is to say,)

Regulations as to registration of existing companies.

(1.) No company having the liability of its mem-

bers limited by act of parliament (*a*) or letters patent (*b*), and not being a joint-stock company as hereinafter defined (*c*), shall register under this act in pursuance of this part thereof;

- (2.) No company having the liability of its members limited by act of parliament or by letters patent shall register under this act in pursuance of this part thereof as an unlimited company, or as a company limited by guarantee;
- (3.) No company that is not a joint-stock company as hereinafter defined shall in pursuance of this part of this act register under this act as a company limited by shares;
- (4.) No company shall register under this act in pursuance of this part thereof unless an assent to its so registering given by a majority of such of its members as may be present, personally or by proxy (*d*), in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose;
- (5.) Where a company not having the liability of its members limited by act of parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting;
- (6.) Where a company is about to register as a company limited by guarantee the assent to its being so registered shall be accompanied by a resolution (*e*) declaring that each member undertakes to contribute to the assets of the company, in the event of the same being wound-up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before

the time at which he ceased to be a member, and of the costs, charges and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount:

In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member (*f*).

(*a*) See *ante*, p. 3, n. (*c*).

(*b*) See *ante*, p. 3, n. (*d*); sect. 9, *ante*, p. 17.

(*c*) See sect. 181, *post*.

(*d*) See *ante*, pp. 54, 55.

(*e*) See sect. 9, pl. 4, *ante*, p. 18; see sect. 196, *post*, p. 227.

(*f*) See *ante*, pp. 55, 56.

180. With the above exceptions, and subject to the foregoing regulations, every company existing at the time of the commencement of this act, including any company registered under the said Joint Stock Companies Acts (*h*), consisting of seven or more members, and any company hereafter formed in pursuance of any act of parliament other than this act, or of letters patent, or being a company engaged in working mines within and subject to the jurisdiction of the stannaries, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this act as an unlimited company, or a company limited by shares (*i*), or a company limited by guarantee; and no registration shall be invalid by reason that it has taken place with a view to the company being wound-up.

Companies capable of being registered (*g*).

(*g*) See 20 & 21 Vict. c. 14, s. 29.

(*h*) See sects. 176, 177, *ante*, p. 218.

(*i*) See sect. 179, *ante*, p. 219.

181. For the purposes of this part of this act, so far as the same relates to the description of companies empowered to register as companies limited by shares, a joint-stock company shall be deemed

Definition of joint-stock company.

to be a company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such company when registered with limited liability under this act shall be deemed to be a company limited by shares (*k*).

(*k*) See sect. 8, *ante*, p. 13.

Proviso as
to banking
company (*l*).

182. No banking company claiming to issue notes in the United Kingdom shall be entitled to limited liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof, and, if necessary, the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited company (*m*).

(*l*) See 21 & 22 Vict. c. 91, s. 1.

(*m*) See sect. 188, *post*, p. 225.

Requisitions
for regis-
tration by
companies.

183. Previously to the registration in pursuance of this part of this act of any joint stock company (*a*) there shall be delivered to the registrar the following documents, (that is to say,)

- (1.) A list showing the names, addresses and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number;
- (2.) A copy of any act of parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost-book regulations or other instrument constituting or regulating the company (*b*);
- (3.) If any such joint stock company is intended

to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars, (that is to say,)

The nominal capital of the company and the number of shares into which it is divided ;

The number of shares taken and the amount paid on each share ;

The name of the company, with the addition of the word "limited" as the last word thereof (c) ;

With the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee.

(a) See sect. 181, *ante*, p. 221.

(b) See sect. 209, *post*, as to insurance companies which have been registered under 7 & 8 Vict. c. 110.

(c) See sect. 190, *post*, p. 226.

184. Previously to the registration in pursuance of this part of this act of any company not being a joint stock company (d) there shall be delivered to the registrar a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company, also a copy of any act of parliament, letters patent, deed of settlement, contract of copartnery, cost-book regulations or other instrument constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of guarantee.

Requisitions for registration by existing company not being a joint-stock company.

(d) See sect. 181, *ante*, p. 221.

185. Where a joint stock company (f) authorized to register under this act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the registrar a statement of shares, deliver to the registrar a statement of the amount of stock belonging to the company, and

Power for existing company to register amount of stock instead of shares (e).

the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

(e) See 20 & 21 Vict. c. 14, s. 30.

(f) See sect. 181, *ante*, p. 221.

Authentica-
tion of state-
ments of
existing
com-
panies (g).

186. The lists of members and directors and any other particulars relating to the company hereby required to be delivered to the registrar shall be verified by a declaration of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company, made in pursuance of the act passed in the sixth year of the reign of his late majesty King William the Fourth, chapter sixty-two (h).

(g) See 19 & 20 Vict. c. 47, s. 112.

Form of
declaration.

(h) I, A. B. do solemnly and sincerely declare that — and I make this solemn declaration, conscientiously believing the same to be true and by virtue of the provisions of the Companies Act, 1862, and of an act made and passed in the session of parliament held in the fifth and sixth years of the reign of his majesty king William the Fourth, intituled “An Act to repeal an Act of the present Session of Parliament intituled ‘An Act for the more Effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of Voluntary and Extra-judicial Oaths and Affidavits,’ and to make other Provisions for the Abolition of unnecessary Oaths.”

Declared by the above named —, }
this — day of —, 18—.

Before me —.

Fees on oaths
payable on
declarations
substituted
in lieu
thereof.

Whenever any declaration shall be made and subscribed by any person or persons under or in pursuance of the provisions of that act or any of them, all and every such fees or fee as would have been due and payable on the taking or making any legal oath, solemn affirmation or affidavit shall be in like manner due and payable upon making and subscribing such declaration. 5 & 6 Will. 4, c. 62, s. 19.

Persons
making false
declaration
guilty of a
misdemeanor.

In any case where a declaration is substituted for an oath under the authority of that act or by virtue of any power or authority thereby given, or is directed and authorized to be made and subscribed under the authority of that act or by virtue of any power thereby given, any person who shall wilfully and corruptly make and subscribe any such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor. *Ib.*, s. 21.

187. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or not a joint stock company as hereinbefore defined (a).

Registrar may require evidence as to nature of company.

(a) Sect. 181, *ante*, p. 221.

188. Every banking company existing at the date of the passing of this act which registers itself as a limited company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the company, and such notice shall be given either by delivering the same to such person or firm, or leaving the same or putting the same into the post addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the company; and in case the company omits to give any such notice as is hereinbefore required to be given, then as between the company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

On registration of banking company with limited liability notice to be given to customers (b).

(b) See 21 & 22 Vict. c. 91, s. 3.

189. No fees shall be charged in respect of the registration in pursuance of this part of this act of any company in cases where such company is not registered as a limited company, or where previously to its being registered as a limited company the liability of the shareholders was limited by some other act of parliament or by letters patent.

Exemption of certain companies from payment of fees (c).

(c) See 20 & 21 Vict. c. 14, s. 32.

Power to
company to
change
name (a).

190. Any company authorized by this part of this act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name, by adding thereto the word "limited."

(a) See 19 & 20 Vict. c. 47, s. 114.

Certificate of
registration
of existing
companies (b)

191. Upon compliance with the requisitions in this part of this act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked (B.) and (C.) in the first schedule hereto, the registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this act, and, in the case of a limited company, that it is limited, and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in Scotland so incorporated shall be deemed and taken to be a bank incorporated, constituted or established by or under act of parliament.

(b) See 19 & 20 Vict. c. 47, s. 113.

Certificate to
be evidence
of com-
pliance with
act (c).

192. A certificate of incorporation given at any time to any company registered in pursuance of this part of this act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this act have been complied with, and that the company is authorized to be registered under this act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this act.

(c) See 19 & 20 Vict. c. 47, s. 115.

Transfer of
property to
company.

193. All such property, real and personal, including all interests and rights in, to and out of property, real and personal, and including obligations and things in action, as may belong to or be

vested in the company at the date of its registration under this act, shall on registration pass to and vest in the company as incorporated under this act for all the estate and interest of the company therein.

194. The registration in pursuance of this part of this act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of such company previously to such registration.

Registration under this act not to affect obligations incurred previously to registration (d).

(d) See 19 & 20 Vict. c. 47, s. 116; 20 & 21 Vict. c. 49, s. 8.

195. All such actions, suits and other legal proceedings as may at the time of the registration of any company registered in pursuance of this part of this act have been commenced by or against such company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such company upon any judgment, decree or order obtained in any action, suit or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree or order, an order may be obtained for winding-up the company.

Continuation of existing actions and suits (e).

(e) See 19 & 20 Vict. c. 47, s. 116; 20 & 21 Vict. c. 49, s. 10.

196. When a company is registered under this act in pursuance of this part thereof, all provisions contained in any act of parliament, deed of settlement, contract of copartnery, cost-book regulations, letters patent or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner

Effect of registration under act (a).

and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this act shall apply to such company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this act, subject to the provisions following, (that is to say,)

- (1.) That table (A.) in the first schedule to this act shall not, unless adopted by special resolution, apply to any company registered under this act in pursuance of this part thereof;
- (2.) That the provisions of this act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;
- (3.) That no company shall have power to alter any provision contained in any act of parliament relating to the company;
- (4.) That no company shall have power, without the sanction of the board of trade, to alter any provision contained in any letters patent relating to the company;
- (5.) That in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted prior to registration, who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs, charges and expenses of winding-up the company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to con-

tribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death, bankruptcy or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the representatives, heirs and devisees of deceased contributories, and with reference to the assignees of bankrupt or insolvent contributories, and to the husbands of married contributories, shall apply;

- (6.) That nothing herein contained shall authorize any company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost-book regulations, letters patent or other instrument constituting or regulating the company, as would, if such company had originally been formed under this act, have been contained in the memorandum of association, and are not authorized to be altered by this act:

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this act in pursuance of this part thereof by virtue of any act of parliament, deed of settlement, contract of copartnery, letters patent or other instrument constituting or regulating the company (b).

(a) See 20 & 21 Vict. c. 14, s. 33.

(b) See sects. 74—78, *ante*, pp. 76—97; sects. 105, 106, *ante*, p. 156.

197. The court may, at any time after the presentation of a petition for winding-up a company registered in pursuance of this part of this act, and before making an order for winding-up the com-

Power of court to restrain further proceedings (c).

pany, upon the application by motion of any creditor of the company, restrain further proceedings in any action, suit or legal proceeding against any contributory of the company as well as against the company as hereinbefore provided, upon such terms as the court thinks fit (*d*).

(*c*) See 19 & 20 Vict. c. 47, s. 84.

(*d*) See sect. 195, *ante*, p. 227 ; s. 85, *ante*, p. 105 ; sects. 201—204, *post*, pp. 234, 235.

Order for winding-up company (*e*).

198. Where an order has been made for winding-up a company registered in pursuance of this part of the act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit, action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose (*f*).

(*e*) See 19 & 20 Vict. c. 47, s. 73.

(*f*) See sects. 87, 195, *ante*, pp. 107, 227 ; sect. 202, *post*, p. 234.

PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

Winding-up of unregistered companies (*a*).

199. Subject as hereinafter mentioned, any partnership, association or company, except railway companies incorporated by act of parliament (*b*), consisting of more than seven members, and not registered under this act, and hereinafter included under the term unregistered company, may be wound-up under this act, and all the provisions of this act with respect to winding-up shall apply to such company, with the following exceptions and additions :

- (1.) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding-up, be deemed to be registered in that

part of the United Kingdom where its principal place of business is situate; or, if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; moreover the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one part of the United Kingdom) such one of its principal places of business as is situate in that part of the United Kingdom in which proceedings are being instituted, shall for all the purposes of the winding-up of such company be deemed to be the registered office of the company;

- (2.) No unregistered company shall be wound-up under this act voluntarily or subject to the supervision of the court (*c*);
- (3.) The circumstances under which an unregistered company may be wound-up are as follows; (that is to say,)
 - (*a.*) Whenever the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs;
 - (*b.*) Whenever the company is unable to pay its debts;
 - (*c.*) Whenever the court is of opinion that it is just and equitable that the company should be wound-up:
- (4.) An unregistered company shall, for the purposes of this act, be deemed to be unable to pay its debts (*d*),—
 - (*a.*) Whenever a creditor to whom the company is indebted, at law or in equity, by assignment or otherwise, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at the principal place of business

of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor ;

- (b.) Whenever any action, suit or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company, or from him in his character of member of the company, and notice in writing of the institution of such action, suit or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of such notice paid, secured or compounded for such debt or demand, or procured such action, suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same ;
- (c.) Whenever, in England or Ireland, execution or other process issued on a judgment, decree or order obtained in any court in

favour of any creditor in any proceeding at law or in equity instituted by such creditor against the company, or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(d.) Whenever, in the case of an unregistered company engaged in working mines within and subject to the jurisdiction of the stannaries, a customary decree or order absolute for the sale of the machinery, materials and effects of such mine has been made in a creditor's suit in the court of the vice-warden;

(e.) Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(f.) Whenever it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

(a) See 11 & 12 Vict. c. 45, sects. 1—3.

(b) The Abandonment of Railways Act, 1850. See 13 & 14 Vict. c. 83, Shelford on the Law of Railways, pp. 652—657, 3rd ed.

(c) There is an exception to this rule. By 25 & 26 Vict. c. 89, s. 17, any society registered under that act may be wound-up either by the court voluntarily, in the same manner and under the same circumstances under and in which any company may be wound-up under any act or acts for the time being in force for winding-up companies; and all the provisions of such acts or act with respect to winding-up shall apply to such society, with this exception, that the court having jurisdiction in the winding-up shall be the county court of the district in which the office of the society is situated. See this act, *post*.

(d) See sects. 79, 80, *ante*, pp. 99, 100.

200. In the event of an unregistered company being wound-up every person shall be deemed to be a contributory who is liable, at law or in equity,

Who to be deemed a contributory in the

event of
company
being wound-
up (e).

to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of all costs, charges and expenses of winding-up the company, and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid; but in the event of the death, bankruptcy or insolvency of any contributory, or marriage of any female contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs and devisees of a deceased contributory, and to the assignees of a bankrupt or insolvent contributory, and to the husband of married contributories, shall apply.

(e) See 11 & 12 Vict. c. 45, s. 3.

Power of
court to
restrain fur-
ther proceed-
ings (f).

201. The court may, at any time after the presentation of a petition for winding-up an unregistered company, and before making an order for winding-up the company, upon the application of any creditor of the company, restrain further proceedings in any action, suit or proceeding against any contributory of the company, or against the company as hereinbefore provided, upon such terms as the court thinks fit (g).

(f) See 19 & 20 Vict. c. 47, s. 84.

(g) See sect. 85, *ante*, p. 105.

Effect of
order for
winding-up
company (h).

202. Where an order has been made for winding-up an unregistered company in addition to the provisions hereinbefore contained in the case of companies formed under this act (i), it is hereby further provided that no suit, action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose.

(h) See 19 & 20 Vict. c. 47, s. 73.

(i) See sect. 87, *ante*, p. 107.

203. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the order made for winding-up such company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims and rights into and out of property, real and personal, and including things in action, as may belong to or be vested in the company, or to or in any person or persons on trust for or on behalf of the company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names and after giving such indemnity as the court directs, bring or defend any actions, suits or other legal proceedings relating to any property vested in him or them, or any actions, suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding-up the company and recovering the property thereof.

Provision in case of unregistered company (k).

(k) See 11 & 12 Vict. c. 45, s. 29.

204. The provisions made by this part of the act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding-up companies by the court, and the court or official liquidator may, in addition to anything contained in this part of the act, exercise any power or do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies formed under this act; but an unregistered company shall not, except in the event of its being wound-up, be deemed to be a company under this act, and then only to the extent provided by this part of this act.

Provisions in this part of act cumulative.

PART IX.

REPEAL OF ACTS, AND TEMPORARY PROVISIONS.

Repeal of
acts.

205. After the commencement of this act there shall be repealed the several acts specified in the first part of the third schedule hereto, with this qualification, that so much of the said acts as is set forth is the second part of the said third schedule shall be hereby re-enacted and continued in force as if unrepealed.

Saving
clause as to
repeal.

206. No repeal hereby enacted shall affect,

- (1.) Anything duly done under any acts hereby repealed ;
- (2.) The incorporation of any company registered under any act hereby repealed ;
- (3.) Any right or privilege acquired or liability incurred under any act hereby repealed ;
- (4.) Any penalty, forfeiture or other punishment incurred in respect of any offence against any act hereby repealed ;
- (5.) Table (B.) in the schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the time of the commencement of this act (*a*).

(*a*) This table is inserted, *post*.

Saving of
existing pro-
ceedings for
winding-up.

207. Where previously to the commencement of this act an order has been made for winding-up a company under any acts or act hereby repealed, or a resolution has been passed for winding-up a company voluntarily, such company shall be wound-up in the same manner and with the same incidents as if this act were not passed, and for the purposes of such winding-up such repealed acts or act shall be deemed to remain in full force (*b*).

(*b*) All jurisdiction to order the winding-up of a company after the 2nd November, 1862, is taken away from the court of bankruptcy by this section, notwithstanding the petition had been previously presented. *Ex parte Pope, Re Economic Omnibus Company (Limited)*, 7 L. T., N. S. 393—Goulburn, C.

208. Where previously to the commencement of this act any conveyance, mortgage or other deed has been made in pursuance of any act hereby repealed, such deed shall be of the same force as if this act had not passed, and for the purposes of such deed such repealed act shall be deemed to remain in full force.

Saving of conveyance deeds.

209. Every insurance company completely registered under the act passed in the eighth year of the reign of her present Majesty, chapter one hundred and ten (*b*), intituled "An Act for the Registration, Incorporation and Regulation of Joint Stock Companies," shall on or before the second day of November, one thousand eight hundred and sixty-two, and every other company required by any act hereby repealed to register under the said Joint Stock Companies Acts, or one of such acts, and which has not so registered, shall, on or before the expiration of the thirty-first day from the commencement of this act, register itself as a company under this act, in manner and subject to the regulations hereinbefore contained (*c*), with this exception, that no company completely registered under the said act of the eighth year of the reign of her present Majesty shall be required to deliver to the registrar a copy of its deed of settlement; and for the purpose of enabling such insurance companies as are mentioned in this section to register under this act, this act shall be deemed to come into operation immediately on the passing thereof; nevertheless the registration of such companies shall not have any effect until the time of the commencement of this act. No fees shall be charged in respect of the registration of any company required to register by this section.

Compulsory registration of certain companies.

(*b*) See *ante*, p. 1, n. (*b*).

A savings bank company is not necessarily a banking company within the statutes relating to joint stock companies. *Re District Savings Bank, Ex parte Coe*, 10 W. R. 138.

By 7 & 8 Vict. c. 110, s. 2, the term "Joint Stock Company" comprehended "every assurance company or association for the purpose of assurance or insurance on lives, or

against any contingency involving the duration of human life or against the risk of loss or damage by fire or by storm or other casualty, or against the risk of loss or damage to ships at sea or on voyage, or to their cargoes, or for granting or purchasing annuities on lives, and also every institution enrolled under any of the acts of parliament relating to friendly societies, which institutions shall make assurances on lives or against any contingency involving the duration of human life to an extent upon one life, or for any one person to an amount exceeding two hundred pounds, whether such companies, societies or institutions shall be joint stock companies or mutual assurance societies, or both."

The acts 18 & 19 Vict. c. 47, 20 & 21 Vict. cc. 14, 49, 80, amended by 21 & 22 Vict. cc. 60 and 91, did not apply to insurance companies; see 19 & 20 Vict. c. 47, s. 2, and 20 & 21 Vict. c. 80.

(c) See sects. 179, 180, *ante*, pp. 219—221.

Penalty on
company not
registering.
21 Vict. c. 14,
s. 28.

210. If any company required by the last section to register under this act makes default in complying with the provisions thereof, then, from and after the day upon which such company is required to register under this act, until the day on which such company is registered under this act (which it is empowered to do at any time, the following consequences shall ensue, (that is to say,)

- (1.) The company shall be incapable of suing (*d*) either at law or in equity, but shall not be incapable of being made a defendant to a suit either at law or in equity;
- (2.) No dividend shall be payable to any shareholder in such company;
- (3.) Each director or manager of the company shall for each day during which the company so being in default carries on business incur a penalty not exceeding five pounds, and such penalty may be recovered by any person, whether a shareholder or not in the company, and be applied by him to his own use:

Nevertheless, such default shall not render the company so being in default illegal, nor subject it to any penalty or disability, other than as specified in this section; and registration under this act shall

cancel any penalty or forfeiture, and put an end to any disability which any company may have incurred under any act hereby repealed by reason of its not having registered under the said Joint Stock Companies Acts, 1856, 1857, or one of them.

(d) An insurance company which has not been registered under the 209th section of this act is by this section incapacitated from suing: it was held, that the presenting of a petition to wind-up is a suing within the act, and that the joining the chairman, who was a contributory, as a co-petitioner with the company made no difference. *Re Waterloo Life, &c. Assurance Company*, 11 W. R. 134.

211. Upon the application of the directors of any company registered under the Joint Stock Companies Acts as hereinbefore defined (e), or any of them, made within one year after the date of the commencement of this act, sanctioned by a resolution passed at an extraordinary general meeting, but subject to the restrictions hereinafter mentioned, the board of trade shall have authority by their certificate in writing to change the registered office of any such company from any one part of the United Kingdom of Great Britain and Ireland to any other part thereof, and the registrar of joint stock companies with whom the memorandum of registration of such company has been registered shall, upon receipt of such certificate, note in writing upon the margin or at the foot of the said memorandum the name of the place to which such registered office is to be transferred, and the day upon which transfer is pursuant to such certificate to take place, and shall attach the certificate to the memorandum, and the said registrar shall thereupon transmit to the registrar of joint stock companies for that part of the United Kingdom to which the registered office is to be so transferred copies of the said certificate and of the said memorandum of registration so noted certified by him; and the said registrar for the said last-mentioned part of the United Kingdom shall, upon receipt of such copies of certificate and memorandum, retain

Temporary power for companies to change registered office.

and register the same in like manner, and on payment of the like fees to him as provided in the case of the registration of an original memorandum of registration, and thereupon the place of the registered office shall, from the said last-mentioned registration and the said day mentioned in the said certificate, be the place mentioned as such on the said certificate: provided, however, that such change shall in nowise alter or affect anything theretofore done by the said company, or any of their rights or liabilities in respect thereof.

(e) *Ante*, s. 175, p. 217.

Restrictions
on issue of
certificate.

212. The board of trade shall not issue their certificate in pursuance of the foregoing section until they are satisfied that an advertisement of the intention of the company to apply to the board of trade for a certificate, with a declaration that all parties objecting thereto are forthwith to apply to the board of trade, has been published once at the least in each of four successive weeks in the newspapers following; that is to say, in some newspaper circulating in the district where the registered office of the company is situate, and also if the company is registered in England in the London Gazette, if in Ireland in the Dublin Gazette, if in Scotland in the Edinburgh Gazette, nor until the said board are satisfied that the objections, if any, that may be urged against the issue of such certificate are groundless.

FIRST SCHEDULE.

TABLE A. (a).

REGULATIONS FOR MANAGEMENT OF A COMPANY
LIMITED BY SHARES.*Shares (b).*

- (1.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(a) This table corresponds with table B. in the act 19 & 20 Vict. c. 47; see *post*. The two tables are in some respects similar. The regulations contained in this table are applicable to a company limited by shares, formed under the Companies Act, 1862, where the memorandum of association is unaccompanied by articles of association, or so far as such articles do not exclude or modify the regulations of this table, sect. 15, *ante*, p. 21. On the formation of the company the promoters may in the articles of association adopt or omit such of the regulations in table A. as they think proper.

This table is not applicable to companies registered under part vii. of the Companies Act, 1862, unless it be adopted by special resolution; see sect. 196, *ante*, p. 227; see also sect. 176, *ante*, p. 218.

In forming a company under this table a memorandum of articles of association must be obtained and the blanks therein filled up. The promoters of the company will subscribe their names and addresses with the number of shares taken by them respectively placed opposite their names. The number of subscribers must at least be seven, each subscriber is required to take one share, and the execution of the memorandum is to be attested by one witness at least. The memorandum having been executed and stamped with a deed stamp may then be taken with the articles of association, if any, to the proper registry office for registration, and upon payment of the fees (see table B. *post*, p. 260) a certificate of incorporation will be granted by the registrar.

Before registration the promoters of the company should carefully consider whether the regulations contained in

- (2.) Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certi-

table A. are adapted to the objects of the company, and whether any of the clauses therein contained ought to be altered or omitted, and whether it be advisable to insert any other provisions in the articles of association for the management of the company.

(b) See *ante*, p. 25, n. (b), *ante*, s. 22, p. 31. As to shares of bankrupts, *ante*, pp. 86—96.

Stamp in
respect of
shares.

Share certificates as well as scrip certificates issued before the incorporation of the company require a stamp of one penny. 16 & 17 Vict. c. 63, s. 8.

Contract
note.

By 23 & 24 Vict. c. 111, schedule, any note, memorandum or writing commonly called a contract note, or by whatever name the same may be designated, for or relating to the sale or purchase, *inter alia*, of any share or shares of or in any joint stock or other public company, to the amount or value of five pounds or upwards, is liable to a stamp duty of one penny.

Stamps on
contract
note may be
impressed
or adhesive;
if adhesive,
to be can-
celled.

The stamp duty on contract notes may be denoted either by impressed or adhesive stamps, and the commissioners of inland revenue shall provide stamps of both descriptions; and in any case where a contract note is made, and the same is not written on an impressed stamp, there shall be affixed thereon a proper adhesive stamp; and every person who shall make or sign a contract note, to which an adhesive stamp shall be affixed, shall effectually cancel and obliterate the stamp by writing upon or across it his name or the name of his firm, or the initials thereof respectively, and by adding thereto the date of such cancelling, and so and in such manner that the said stamp cannot be used upon or for any other document or writing; and if any person shall make or sign any contract note by the act chargeable with stamp duty without the same being duly stamped, to denote the said duty, or shall refuse or neglect to cancel and obliterate as aforesaid any adhesive stamp affixed thereon, he shall forfeit the sum of twenty pounds; and no charge for brokerage, commission, agency or otherwise, made or to be made by any broker, agent or other person in or about the sale or purchase mentioned or referred to in any contract note made or signed by him shall be lawful, unless such contract note shall be duly stamped, and the stamp thereon, if adhesive, properly cancelled. 23 & 24 Vict. c. 111, s. 7.

Cheques for
less than
20s.

By 23 & 24 Vict. c. 111, s. 19, the 18th section of 55 Geo. 3. c. 184, which prohibited the issuing of notes with printed dates is repealed, and any person may draw upon his banker who shall *bonâ fide* hold money to or for his use any draft or order for payment to the bearer or to order on demand of any sum of money less than 20s.

ficate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

- (3.) If such certificate is worn out or lost, it may be renewed on payment of one shilling, or such less sum as the company in general meeting may prescribe.

Calls on Shares (c).

- (4.) The directors may from time to time make such calls upon the members in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days notice at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.
- (5.) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.
- (6.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.
- (7.) The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

- (8.) The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be

(c) See *ante*, pp. 38, 83, n. (b).

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deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

- (9.) Shares in the company shall be transferred in the following form:—

I, A. B. of in consideration of the sum of pounds paid to me by C. D. of , do hereby transfer to the said C. D. the share [or shares] numbered standing in my name in the books of the company, to hold unto the said C. D., his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I the said C. D. do hereby agree to take the said share [or shares] subject to the same conditions. As witness our hands, the day of .

- (10.) The company may decline to register any transfer of shares made by a member who is indebted to them.
- (11.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares (d).

- (12.) The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share.
- (13.) Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.
- (14.) Any person who has become entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as transferee of such share.

(d) See sect. 24, *ante*, p. 32.

- (15.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.
- (16.) The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

Forfeiture of Shares.

- (17.) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such nonpayment.
- (18.) The notice shall name a further day, on or before which such call, and all interest and expenses that have accrued by reason of such nonpayment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that in the event of nonpayment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.
- (19.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited, by a resolution of the directors to that effect.
- (20.) Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.
- (21.) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

- (22.) A statutory declaration in writing (*e*), that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock (f).

- (23.) The directors may, with the sanction of the company previously given in general meeting, convert any paid up shares into stock.
- (24.) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.
- (25.) The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges

(*e*) See *ante*, p. 224.

(*f*) See sect. 29, *ante*, p. 35.

or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

- (26.) The directors may, with the sanction of a special resolution (g) of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.
- (27.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.
- (28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on nonpayment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

- (29.) The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place, as the directors may determine.

(g) See sect. 12, *ante*, p. 19, n. (b).

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- (30.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.
- (31.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.
- (32.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.
- (33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.
- (34.) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meetings (h).

- (35.) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.
- (36.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the

(h) See *ante*, p. 72, n. (c).

consideration of the accounts, balance sheets and the ordinary report of the directors.

- (37.) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows; that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.
- (38.) If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved: in any other case it shall stand adjourned to the same day in the next week, at the same time and place; and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*.
- (39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.
- (40.) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.
- (41.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (42.) At any general meeting, unless a poll (*i*) is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the

(i) See *ante*, s. 51, pp. 54, 55, n. (c).

number or proportion of the votes recorded in favour of or against such resolution.

- (43.) If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote.

Votes of Members.

- (44.) Every member shall have one vote for every share up to ten: he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.
- (45.) If any member is a lunatic or idiot he may vote by his committee, *curator bonis* or other legal *curator*.
- (46.) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.
- (47.) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.
- (48.) Votes may be given either personally or by proxy.
- (49.) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses: no person shall be appointed a proxy who is not a member of the company.
- (50.) The instrument appointing a proxy shall be de-

posited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

- (51.) Any instrument appointing a proxy shall be in the following form:—

— Company limited (k).

I of in the county of being a member of the company limited, and entitled to vote [or votes], hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the day of and at any adjournment thereof [or at any meeting of the company that may be held in the year].

As witness my hand this day of .

Signed by the said in the presence of .

Directors.

- (52.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.
- (53.) Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.
- (54.) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Powers of Directors.

- (55.) The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing act, or by these articles, required to be exercised by the company in general meeting, subject neverthe-

(k) As to stamps on proxies, see *ante*, pp. 54, 55.

less to any regulations of these articles, to the provisions of the foregoing act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

- (56.) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

- (57.) The office of directors shall be vacated,—
 If he holds any other office or place of profit under the company ;
 If he becomes bankrupt or insolvent ;
 If he is concerned in or participates in the profits of any contract with the company ;
 But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director ; nevertheless he shall not vote in respect of such contract or work ; and if he does so vote his vote shall not be counted.

Rotation of Directors.

- (58.) At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office ; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.
- (59.) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot: in every subsequent year the one-third or other nearest number who have been longest in office shall retire.
- (60.) A retiring director shall be re-eligible.
- (61.) The company at the general meeting at which

any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

- (62.) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.
- (63.) The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.
- (64.) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.
- (65.) The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead: the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

- (66.) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: questions arising at any meeting shall be decided by a majority of votes: in case of an equality of votes the chairman shall have a second or casting vote: a director may at any time summon a meeting of the directors.
- (67.) The directors may elect a chairman of their meetings, and determine the period for which he is

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to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

- (68.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.
- (69.) A committee may elect a chairman of their meetings: if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.
- (70.) A committee may meet and adjourn as they think proper: questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.
- (71.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

- (72.) The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.
- (73.) No dividend shall be payable except out of the profits arising from the business of the company.
- (74.) The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equal-

izing dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

- (75.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.
- (76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the company.
- (77.) No dividend shall bear interest as against the company.

Accounts.

- (78.) The directors shall cause true accounts to be kept,—
 - Of the stock in trade of the company;
 - Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and,
 - Of the credits and liabilities of the company:The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.
- (79.) Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.
- (80.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense

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of the establishment, salaries and other like matters: every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

- (81.) A balance sheet shall be made out in every year, and laid before the company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.
- (82.) A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served (a).

Audit.

- (83.) Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance sheet ascertained, by one or more auditor or auditors.
- (84.) The first auditors shall be appointed by the directors: subsequent auditors shall be appointed by the company in general meeting.
- (85.) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.
- (86.) The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.
- (87.) The election of auditors shall be made by the company at their ordinary meeting in each year.

(a) See *post*, p. 258.

- (88.) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.
- (89.) Any auditor shall be re-eligible on his quitting office.
- (90.) If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.
- (91.) If no election of auditors is made in manner aforesaid the board of trade may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.
- (92.) Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.
- (93.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company: he may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.
- (94.) The auditors shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.



Notices (l).

- (95.) A notice may be served by the company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.
- (96.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.
- (97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

(l) See *ante*, sects. 62—64, *ante*, pp. 69, 70.

17.

CAPITAL AND LIABILITIES.			PROPERTY AND ASSETS.		
I. CAPITAL.			III. PROPERTY held by the Company.		
1.	Showing: The Number of Shares . . .	£ s. d.	7.	Showing: Immoveable Property, distinguishing— (a.) Freehold Land . . . (b.) Buildings . . . (c.) Leasehold . . .	£ s. d.
2.	The Amount paid per Share . . .				
3.	If any Arrears of Calls, the Nature of the Arrear, and the Names of the Defaulters.				
4.	The Particulars of any forfeited Shares.		8.	Movable Property, distinguishing— (a.) Stock in Trade . . . (c.) Plant . . . The Cost to be stated with Deductions for Deterioration in Value as charged to the Reserve Fund or Profit and Loss.	
II. DEBTS AND LIABILITIES of the Company.			IV. DEBTS owing to the Company.		
5.	Showing: The Amount of Loans on Mortgages or Debenture Bonds.		9.	Debts considered good for which the Company hold Bills or other Securities.	
6.	The Amount of Debts owing by the Company, distinguishing— (a.) Debts for which Acceptances have been given. (b.) Debts to Tradesmen for Supplies of Stock in Trade or other Articles. (c.) Debts for Law Expenses. (d.) Debts for Interest on Debentures or other Loans. (e.) Unclaimed Dividends. (f.) Debts not enumerated above.		10.	Debts considered good for which the Company hold no Security.	
			11.	Debts considered doubtful and bad.	
VI. RESERVE FUND.				Any Debt due from a Director or other Officer of the Company to be separately stated.	
	Showing: The Amount set aside from Profits to meet Contingencies.		12.	Showing: The Nature of Investment and Rate of Interest.	
VII. PROFIT AND LOSS.			13.	The Amount of Cash, where lodged, and if bearing Interest.	
CONTINGENT LIABILITIES.					
	Claims against the Company not acknowledged as Debts. Monies for which the Company is contingently liable.				

TABLE B.

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company having a Capital divided into Shares.

For registration of a company whose nominal capital does not exceed 2,000 <i>l.</i> , a fee of	£	s.	d.
	2	0	0
For registration of a company whose nominal capital exceeds 2,000 <i>l.</i> , the above fee of 2 <i>l.</i> , with the following additional fees, regulated according to the amount of nominal capital, (that is to say,)			
For every 1,000 <i>l.</i> of nominal capital, or part of 1,000 <i>l.</i> , after the first 2,000 <i>l.</i> , up to 5,000 <i>l.</i>	£	s.	d.
	1	0	0
For every 1,000 <i>l.</i> of nominal capital, or part of 1,000 <i>l.</i> , after the first 5,000 <i>l.</i> , up to 100,000 <i>l.</i>	0	5	0
For every 1,000 <i>l.</i> of nominal capital, or part of 1,000 <i>l.</i> , after the first 100,000 <i>l.</i>	0	1	0
For registration of any increase of capital made after the first registration of the company, the same fees per 1,000 <i>l.</i> , or part of a 1,000 <i>l.</i> , as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 50 <i>l.</i> , taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.			
For registration of any existing company, except such companies as are by this act exempted from payment of fees in respect of registration under this act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association		0	5 0
For making a record of any fact hereby authorized or required to be recorded by the registrar of companies, a fee of		0	5 0

TABLE C.

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company not having a Capital divided into Shares.

For registration of a company whose number of members as stated in the articles of association does not exceed 20	£	s.	d.
	2	0	0
For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 .	5	0	0
For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of 5 <i>l.</i> , with an additional 5 <i>s.</i> for every 50 members or less number than 50 members after the first 100.			
For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of .	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of such increase .	0	5	0
Provided that no one company shall be liable to pay on the whole a greater fee than 20 <i>l.</i> in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this act exempted from payment of fees in respect of registration under this act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association	0	5	0
For making a record of any fact hereby authorized or required to be recorded by the registrar of companies, a fee of	0	5	0

FORM D.

FORM OF STATEMENT referred to in Part III. of the Act.

The capital of the company is divided into
shares of each (a).

The number of shares issued is .

Calls to the amount of pounds per share have
been made, under which the sum of pounds has
been received.

The liabilities of the company on the first day of
January (or July) were,—

Debts owing to sundry persons by the company :

On judgment, £ .

On specialty, £ .

On notes or bills, £ .

On simple contracts, £ .

On estimated liabilities, £ .

The assets of the company on that day were,—

Government securities [*stating them*], £ .

Bills of exchange and promissory notes, £ .

Cash at the bankers, £ .

Other securities, £ .

SECOND SCHEDULE (b).

FORM A.

MEMORANDUM of ASSOCIATION of a Company limited
by Shares.

1st. The name of the company is “The Eastern Steam
Packet Company, Limited.”

2nd. The registered office of the company will be
situate in England.

3rd. The objects for which the company is established

(a) If the company has no capital divided into shares the
portion of the statement relating to capital and shares must
be omitted.

(b) The forms set for thin this schedule, or other forms as
near thereto as circumstances will admit, are to be used in all
matters to which they refer. Sect. 71, *ante*, p. 75 ; see sect. 8,
ante, p. 13.

are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.				Number of Shares taken by each Subscriber.
1. John Jones of	in the county of	merchant		200
2. John Smith of	in the county of	.. ..		25
3. Thomas Green of	in the county of	.. ..		30
4. John Thompson of	in the county of	.. ..		40
5. Caleb White of	in the county of	.. ..		15
6. Andrew Brown of	in the county of	.. ..		5
7. Cæsar White of	in the county of	.. ..		10
Total shares taken				325

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM B(c).

MEMORANDUM and ARTICLES of ASSOCIATION of a Company limited by Guarantee, and not having a Capital divided into shares.

Memorandum of Association.

1st. The name of the company is "The Mutual London Marine Association, Limited."

(c) See sects. 9, 14, *ante*, pp. 17, 21.

Second Schedule.—Articles of Association

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound-up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding ten pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Cæsar White of in the county of

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

ARTICLES of ASSOCIATION to accompany preceding
MEMORANDUM of ASSOCIATION (d).

- (1.) The company, for the purpose of registration, is declared to consist of five hundred members.
- (2.) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

(d) See sect. 14, *ante*, p. 21.

Definition of Members.

- (3.) Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

- (4.) The first general meeting shall be held at such time, not being more than three months after the incorporation of the company, and at such place as the directors may determine.
- (5.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.
- (6.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.
- (7.) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.
- (8.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.
- (9.) Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting: if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

- (10.) Seven days notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not

- invalidate the proceedings at any general meeting.
- (11.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors.
- (12.) No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows; that is to say, if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.
- (13.) If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved: in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned sine die.
- (14.) The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.
- (15.) If there be no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.
- (16.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (17.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried

ried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favor of or against such resolution.

- (18.) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

Votes of Members.

- (19.) Every member shall have one vote and no more.
 (20.) If any member is a lunatic or idiot he may vote by his committee, *curator bonis*, or other legal curator.
 (21.) No member shall be entitled to vote at any meeting unless all monies due from him to the company have been paid.
 (22.) Votes may be given either personally or by proxies: a proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.
 (23.) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.
 (24.) Any instrument appointing a proxy shall be in the following form:—(a)

— Company limited.

I of in the county of being a member of the Company Limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of , and at any adjournment thereof to be held on the day of next [*or*, at any meeting of the company that may be held in the year].

As witness my hand this day of .

Signed by the said in the presence of .

- (a) As to stamps on proxies, see *ante*, pp. 54, 55.

*Second Schedule.—Articles of Association**Directors.*

- (25.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.
- (26.) Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this act be deemed to be directors.

Powers of Directors.

- (27.) The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

- (28.) The directors shall be elected annually by the company in general meeting.

Business of Company.

[*Here insert rules as to mode in which business of insurance is to be conducted.*]

Accounts.

- (29.) The accounts of the company shall be audited by a committee of five members, to be called the audit committee.
- (30.) The first audit committee shall be nominated by the directors out of the body of members.
- (31.) Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.
- (32.) The audit committee shall be supplied with copy of the balance sheet, and it shall be the duty to examine the same with the accounts and vouchers relating thereto.
- (33.) The audit committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company: they may, at the expense of the company, employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the company.

- (34.) The audit committee shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations of the company, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

- (35.) A notice may be served by the company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.
- (36.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the post office.

Winding-up.

- (37.) The company shall be wound-up voluntarily whenever an extraordinary resolution, as defined by the Companies Act, 1862, is passed, requiring the company to be wound-up voluntarily.

Names, Addresses and Description of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Cæsar White of in the county of

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell,
Middlesex.

FORM C. (e)

MEMORANDUM and ARTICLES of ASSOCIATION of a
Company limited by Guarantee, and having a
Capital divided into Shares.

Memorandum of Association.

1st. The name of the company is "The Highland Hotel Company; Limited."

2nd. The registered office of the company will be situate in Scotland.

3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound-up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Cæsar White of in the county of

Dated this 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell,
Middlesex.

Articles of Association to accompany preceding Memorandum of Association (f).

1. The capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.

Number of
Shares taken
by each
Subscriber.

1. John Jones of	in the county of	..	..	200
2. John Smith of	in the county of	..	..	25
3. Thomas Green of	in the county of	..	..	30
4. John Thompson of	in the county of	..	..	40
5. Caleb White of	in the county of	..	..	15
6. Andrew Brown of	in the county of	..	..	5
7. Cæsar White of	in the county of	..	..	10
Total shares taken ..				325

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell,
Middlesex.

(f) See sect. 14, ante, p. 21.

FORM D. (g)

MEMORANDUM and ARTICLES of ASSOCIATION of an unlimited Company, having a Capital divided into Shares.

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method, John Smith, of London, is the sole patentee."

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of.
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Abel Brown of in the county of

Dated 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 20, Bond Street, Middlesex.

Articles of Association to accompany the preceding Memorandum of Association (h).

Capital of the Company.

The capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

(g) See sects. 10, 14, *ante*, pp. 18, 21.

(h) See sect. 14, *ante*, p. 21.

Application of Table A.

All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.				Number of Shares taken by Subscribers.
1. John Jones of	in the county of	merchant		1
2. John Smith of	in the county of	.. ..		5
3. Thomas Green of	in the county of	.. ..		2
4. John Thompson of	in the county of	.. ..		2
5. Caleb White of	in the county of	.. ..		3
6. Andrew Brown of	in the county of	.. ..		4
7. Abel Brown of	in the county of	.. ..		1
Total shares taken				18

Dated the 22nd day of November, 1861.

Witness to the above signatures,
A. B., No. 20, Bond Street, Middlesex.

FORM E. (as required by the Second Part of the Act) (i).

SUMMARY of CAPITAL and SHARES of the COMPANY, made up to the day of .

Nominal Capital £ divided into Shares of £ each.

Number of Shares taken up to the day of .

There has been called up on each Share £ .

Total Amount of Calls received £ .

Total Amount of Calls unpaid £ .

List of Persons holding Shares in the Company on the day of , and of Persons who have held Shares therein at any Time during the Year immediately preceding the said day of , showing their Names and Addresses, and an Account of the Shares so held.

Folio in Register Ledger containing Particulars.	NAMES, ADDRESSES AND OCCUPATIONS.			ACCOUNT OF SHARES.				Remarks.	
	Surname.	Christian Name.	Address.	Occupation.	Shares held by existing Members on the day of .	Additional Shares held by existing Members during preceding Year.			Shares held by Persons no longer Members.
						Number.	Date of Transfer.		

(i) See sect. 26, ante, p. 33.

FORM F.

LICENCE TO HOLD LANDS.

The lords of the committee of privy council appointed for the consideration of matters relating to trade and foreign plantations hereby licence the association, limited, to hold the lands hereunder described [*insert description of lands*]. The conditions of this licence are [*insert conditions, if any*] (*k*).

(*k*) See *ante*, p. 27, n. (*c*); sect. 21, *ante*, p. 30.

THIRD SCHEDULE.

THIRD SCHEDULE (a).

FIRST PART.

Date and Chapter of Act.	Title of Act.
21 & 22 Geo. 3, c. 46 (Parliament of Ireland.)	An Act to promote Trade and Manufactures by regulating and encouraging Partnerships.
7 & 8 Vict. c. 110 ..	An Act for the Registration, Incorporation and Regulation of Joint Stock Companies.
7 & 8 Vict. c. 111 ..	An Act for facilitating the winding-up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements.
7 & 8 Vict. c. 113 ..	An Act to regulate Joint Stock Banks in England.
8 & 9 Vict. c. 98 ..	An Act for facilitating the winding-up the Affairs of Joint Stock Companies in Ireland unable to meet their pecuniary Engagements.
9 & 10 Vict. c. 28 ..	An Act to facilitate the Dissolution of certain Railway Companies.
9 & 10 Vict. c. 75 ..	An Act to regulate Joint Stock Banks in Scotland and Ireland.
10 & 11 Vict. c. 78 ..	An Act to amend an Act for the Registration, Incorporation and Regulation of Joint Stock Companies.
11 & 12 Vict. c. 45 ..	An Act to amend the Acts for facilitating the winding-up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also to facilitate the Dissolution and winding-up of Joint Stock Companies and other Partnerships.
12 & 13 Vict. c. 108 ..	An Act to amend the Joint Stock Companies Winding-up Act, 1848.
19 & 20 Vict. c. 47 ..	An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations.
20 & 21 Vict. c. 14 ..	An Act to amend the Joint Stock Companies Act, 1856.
20 & 21 Vict. c. 49 ..	An Act to amend the Law relating to Banking Companies.
20 & 21 Vict. c. 78 ..	An Act to amend the Act 7 & 8 Vict. c. 111, for facilitating the winding-up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also the Joint Stock Companies Winding-up Acts, 1848 and 1849.
20 & 21 Vict. c. 80 ..	An Act to amend the Joint Stock Companies Act, 1856.
21 & 22 Vict. c. 60 ..	An Act to amend the Joint Stock Companies Acts, 1856 and 1857, and the Joint Stock Banking Companies Act, 1857.
21 & 22 Vict. c. 91 ..	An Act to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability.

(a) See sect. 205, *ante*, p. 236.

SECOND PART (a).

7 & 8 Vict. c. 113, s. 47.

Every company of more than six persons established on the sixth day of May, one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the act passed in the session holden in the seventh and eighth years of the reign of her present Majesty, chapter one hundred and thirteen, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such copartnership as the nominal plaintiff, petitioner or defendant on behalf of such copartnership; and all judgments, decrees and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London, under the provisions of an act passed in the seventh year of the reign of king George the fourth, chapter forty-six, intituled "An Act for the better regulating Copartnerships of certain Bankers in England, and for amending so much of an Act of the Thirty-ninth and Fortieth years of the reign of His late Majesty King George the Third, intituled 'An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the Supply for the Service of the Year One thousand eight hundred, as relates to the same,'" provided that such first-mentioned company shall make out and deliver from time to time to the commissioners of stamps and taxes the several accounts or returns required by the last-mentioned act, and all the provisions of the last-recited act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited act (b).

(a) This part is re-enacted by sect. 205, *ante*, p. 236.

(b) The object of the following note is to make this part of the act intelligible.

By 39 & 40 Geo. 3, c. 28, all banking companies (except the Bank of England) consisting of more than six persons were illegal.

The statute 7 Geo. 4, c. 46, was amended by 1 & 2 Vict.

20 & 21 Vict. c. 49, part of Section XII.

Power to
form banking
partnerships
of ten per-
sons.

Notwithstanding anything contained in any act passed in the session holden in the seventh and eighth years of the reign of her present Majesty, chapter one hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of this act have carried on such business.

c. 96, and 3 & 4 Vict. c. 111, and as to the issue of notes, &c. by bankers, by 3 & 4 Will. 4, cc. 83, 98; 4 & 5 Vict. c. 50, as to the returns to be made by banks of the amount of their notes in circulation; and by 7 & 8 Vict. c. 32, which regulates the issue of bank notes by, and confers certain privileges on, the Bank of England; 8 & 9 Vict. c. 76.

The 7 Geo. 4, c. 46, was repealed by 20 & 21 Vict. c. 49, as to companies formed after 6th May, 1844, by 7 & 8 Vict. c. 113, and as to companies formed before that time but registered under the Joint Stock Companies Acts, 1856, 1857.

The statute 7 Geo. 4, c. 46, still remains in force as to companies formed before 6th May, 1844, and not registered under the Joint Stock Companies Acts, 1856—1858.

By 3 & 4 Will. 4, c. 98, s. 3, any company or partnership, although consisting of more than six persons, was enabled to carry on the business of banking in London or within sixty-five miles thereof, provided such company or partnership did not borrow, owe or take up in England any sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof during the continuance of the privileges granted to the Bank of England.

By 7 & 8 Vict. c. 113, s. 1, no banking company of more than six persons could carry on banking business under articles entered into on or after 6th May, 1844, unless by letters patent to be granted according to the provisions of that act, but that act did not prevent the continuance of any banking business legally established before 6th May, 1844.

Liability of
members.

By 7 Geo. 4, c. 46, s. 1, copartnerships of more than six in number were enabled to carry on business as bankers in England sixty-five miles distant from London, provided they had no banking establishment in London, and every member of any such corporation or copartnership is liable and responsible for the due payment of all bills and notes which shall be issued, and for all sums of money which

shall be borrowed, owed or taken up by the corporation or copartnership of which such persons shall be a member, such person being a member at the period of the date of the bills or notes, or becoming or being a member before or at the time of the bills or notes being payable, or being such member at the time of the borrowing, owing or taking up of any sum or sums of money upon any bills or notes by the corporation or copartnership, or while any sum of money on any bills or notes is owing or unpaid, or at the time the same became due from the corporation or copartnership; any agreement, covenant or contract to the contrary notwithstanding.

That act did not authorize copartnerships to issue within the limits mentioned any bills payable on demand; nor to draw bills upon any partner, &c. so resident, for less than 50*l.*; nor to borrow money, or take up or issue bills of exchange, contrary to the provisions of the act 39 & 40 Geo. 3, c. 28, except as therein provided. *Ib.*, ss. 2, 3.

Such copartnerships, before issuing any notes, &c. were required to deliver at the stamp office in London an account containing the name of the firm, &c. *Ib.*, s. 4; see 3 & 4 Will. 4, c. 83, s. 2.

The account to be returned to the stamp office was to be verified on the oath of one of the public officers. 7 Geo. 4, c. 46, s. 5.

That provision has been considered to be directory. *Steward v. Dunn*, 12 M. & W. 663; see *Bosanquet v. Woodford*, 5 Q. B. 310; and *Shelford on Law of Railways*, as to directory and imperative statutes, pp. 73—75.

Certified copies of returns are to be evidence of the appointment of the public officers, &c. 7 Geo. 4, c. 46, s. 6.

A certified copy of a return is evidence of the facts stated in it without proving that the affidavit verifying it was made by the public registered officer. *Bosanquet v. Woodford*, 5 Q. B. 310; but such facts may be proved by parol and other evidence. *Edwards v. Buchanan*, 3 B. & Ad. 788; *Reg. v. James*, 7 Car. & P. 533; and notwithstanding an informality in a return; *Reg. v. Carter*, 1 Car. & R. 741; *Reg. v. Beard*, 8 Car. & P. 143; the list of proprietors filed at the stamp office is not receivable in evidence as against the plaintiffs, to show that at the time they were not proprietors, upon a *scire facias* against proprietors upon a judgment obtained against the public officer. *Prescott v. Buttery*, 1 C. B. 41.

The commissioners of inland revenue are to give certified copies of affidavits on payment of 10*s.* 7 Geo. 4, c. 46, s. 7.

An account of the new officers or members in the course of any year is required to be returned. *Ib.*, s. 8. The following is the form prescribed by the act.

SCHEDULE (B).

Actions by and against Companies

SCHEDULE (B).

Form of
return.

Return or account to be entered at the stamp office in London, on behalf of [*name the corporation or copartnership*] in pursuance of an act passed in the seventh year of the reign of king George the fourth, intituled "An Act for the better regulating Copartnerships of certain Bankers in England; and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of His late Majesty King George the Third, intituled 'An Act for establishing an Agreement with the Governor and Company of the Bank of England, for advancing the Sum of Three Millions towards the Supply for the Service of the Year One thousand eight hundred,'" as relates to the same.

Names of any and every new or additional public officer of the said corporation or copartnership; viz.

A. B. in the room of C. D. deceased or removed [*as the case may be*] [*set forth every name.*]

Names of any and every person who may have ceased to be a member of such corporation or copartnership; viz. [*set forth every name.*]

Names of any and every person who may have become a new member of such corporation or copartnership [*set forth every name*].

Names of any additional towns or places where bills or notes are to be issued, and where the same are to be made payable.

A. B. of secretary [*or other officer*] of the above-named corporation or copartnership, maketh oath and saith, that the above doth contain the name and place of abode of any and every person who hath become or been appointed a public officer of the above corporation or copartnership, and also the name and place of abode of any and every person who hath ceased to be a member of the said corporation or copartnership, and of any and every person who hath become a member of the said copartnership since the registry of the said corporation or copartnership on the day of last, as the same respectively appear on the books of the said corporation or copartnership, and to the best of the information, knowledge and belief of this deponent.

Sworn before me, the day of at in the
county of .

C. D. justice of the peace in and
for the said county.

Return re-
quired to
be made by
other com-
panies.

By the act 7 Will. 4 & 1 Vict. c. 73, s. 6, companies governed by the Letters Patent Act, and having their principal place of business in England and Wales, are directed to

make periodical returns of the names and residences of their shareholders to the inrolment office of the Court of Chancery, which returns are directed to be registered and indexed. By 7 & 8 Vict. c. 110, ss. 10—18, companies governed by that act were directed to make similar returns to the registrar of joint stock companies. See 8 & 9 Vict. c. 16, ss. 9, 10, 36. As to returns under the Companies Act, 1862, see ss. 17, 20, 26, 28, 34, 40, 45, 53, 88, 143, *ante*.

By 7 Geo. 4, c. 46, s. 9, all actions and suits, and also all petitions to found any commission of bankruptcy against any person or persons who may be at any time indebted to any such copartnership carrying on business under the provisions of that act, and all proceedings at law or in equity under any commission of bankruptcy, and all other proceedings at law or in equity to be commenced or instituted for or on behalf of any such copartnership against any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, for recovering any debts or enforcing any claims or demands due to such copartnership, or for any other matter relating to the concerns of such copartnership, shall and lawfully may, from and after 26th May, 1826, be commenced or instituted and prosecuted in the name of any one of the public officers nominated as aforesaid for the time being of such copartnership, as the nominal plaintiff or petitioner for or on behalf of such copartnership; and that all actions or suits, and proceedings at law or in equity, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, against such copartnership, shall and lawfully may be commenced, instituted and prosecuted against any one or more of the public officers nominated as aforesaid for the time being of such copartnership, as the nominal defendant for and on behalf of such copartnership; and all indictments, informations and prosecutions by or on behalf of such copartnership, for any stealing or embezzlement of any money, goods, effects, bills, notes, securities or other property of or belonging to such copartnership, or for any fraud, forgery, crime or offence committed against or with intent to injure or defraud such copartnership, may be had, preferred and carried on in the name of any one of the public officers nominated as aforesaid for the time being of such copartnership; and in all indictments and informations to be had or preferred by or on behalf of such copartnership against any person or persons whomsoever, notwithstanding such person or persons may happen to be a member or members of such copartnership, it shall be sufficient to state the money, goods, effects, bills, notes, securities or other property of such copartnership to be the money, goods, effects, bills, notes, securities or other property of any one of the public officers nominated as aforesaid for the time being of such

Copartnerships shall sue and be sued in the name of their public officers.

copartnership; and any forgery, fraud, crime or other offence committed against or with intent to injure or defraud any such copartnership, may in such indictment or indictments, notwithstanding as aforesaid, be laid or stated to have been committed against or with intent to injure or defraud any one of the public officers nominated as aforesaid for the time being of such copartnership; and any offender or offenders may thereupon be lawfully convicted for any such forgery, fraud, crime or offence; and that in all other allegations, indictments, informations or other proceedings of any kind whatsoever, in which it otherwise might or would have been necessary to state the names of the persons composing such copartnership, it shall be sufficient to state the name of any one of the public officers nominated as aforesaid for the time being of such copartnership; and the death, resignation, removal or any act of such public officer shall not abate or prejudice any such action, suit, indictment, information, prosecution or other proceeding commenced against or by or on behalf of such copartnership, but the same may be continued, prosecuted and carried on in the name of any other of the public officers of such copartnership for the time being.

Banking copartnerships may sue and be sued.

Any person, on the 14th Aug., 1838, being or having been or who might thereafter be or have been a member of any copartnership then carrying on or which might thereafter carry on the business of banking under the provisions of the acts 7 Geo. 4, c. 46, and 6 Geo. 4, c. 42, may, at any time in respect of any demand which such person may have, either solely or jointly with any other person, against the said copartnership or the funds or property thereof, commence and prosecute, either solely or jointly with any other person (as the case may require), any action, suit or other proceeding at law or in equity against any public officer appointed or to be appointed under the provisions of the same acts to sue and be sued on the behalf of the said copartnership; and any such public officer may in his own name commence and prosecute any action, suit or other proceeding at law or in equity against any person being or having been a member of the said copartnership, either alone or jointly with any other person, against whom any such copartnership has or may have any demand whatsoever; and every person being or having been a member of any such copartnership shall, either solely or jointly with any other person (as the case may require), be capable of proceeding against any such copartnership by their public officer, and be liable to be proceeded against by or for the benefit of the said copartnership by such public officer as aforesaid, by such proceedings and with the same legal consequences as if such person had not been a member of the said copartnership; and no action or suit shall in anywise be affected or defeated by reason of the plaintiffs or defendants or any of them respectively, or any other person in whom any

interest may be averred or who may be in anywise interested or concerned in such action, being or having been a member of the said copartnership; and all such actions, suits and proceedings shall be conducted and have effect as if the same had been between strangers. 1 & 2 Vict. c. 96, s. 1.

An officer once appointed is presumed to remain in office until the contrary shall be shown. *Steward v. Dunn*, 12 M. & W. 655. There ought always to be an officer capable of being sued. *Steward v. Greaves*, 10 M. & W. 711, see p. 721. A public officer in an action against him, as a nominal defendant, may deny that he fills the office, but such a plea will not be supported by evidence which only shows that the company has ceased to carry on business. *Needham v. Law*, 11 M. & W. 40; *Davidson v. Cooper*, *Ib.* 778.

If any member or members of any banking copartnership within the meaning of the act 1 & 2 Vict. c. 96, or of any other banking copartnership consisting of more than six persons formed in pursuance of the act 3 & 4 Will. 4, c. 98, shall steal or embezzle any money, goods, effects, bills, notes, securities or other property of or belonging to any such copartnership, or shall commit any fraud, forgery, crime or offence against or with intent to injure or defraud any such copartnership, such member or members may be prosecuted in the name of any officers for the time being of any such copartnership in whose name any action or suit might be lawfully brought against any member or members of any such copartnership for every such fraud, forgery, crime or offence, and may thereupon be lawfully convicted as if such person or persons had not been or was or were not a member or members of such copartnership, any law, usage or custom to the contrary notwithstanding. 3 & 4 Vict. c. 111, s. 2.

Punishment for embezzling by members of banking companies.

In case the merits of any demand by or against any such copartnership shall have been determined in any action or suit by or against any such public officer, the proceedings in such action or suit may be pleaded in bar of any other action or suit by or against the public officer of the same copartnership for the same demand. 1 & 2 Vict. c. 96, s. 2.

Proceedings in an action may be pleaded in bar of any other action.

All the provisions of the said acts, 7 Geo. 4, c. 46, and 6 Geo. 4, c. 42, relative to actions, suits and proceedings commenced or prosecuted under the authority thereof, shall be applicable to actions, suits and proceedings commenced or prosecuted under the authority of the act 1 & 2 Vict. c. 96. *Ib.* s. 3.

Extending provisions of former acts to present act.

No claim or demand which any member of any such copartnership may have in respect of his share of the capital or joint stock thereof, or of any dividends, interest, profits or bonus payable or apportionable in respect of such share, shall be capable of being set off, either at law or in equity, against any demand which such copartnership may have against such member on account of any other matter or thing whatsoever; but all proceedings in respect of such other matter or thing

A member's share in capital of copartnership not to be set off against any demand which such copartner-

ship may have against him.

Not more than one action for the recovery of one demand.

Decrees of a court of equity against the public officer to take effect against the copartnership.

Judgments against such public officer shall operate against the copartnership.

may be carried on as if no claim or demand existed in respect of such capital or joint stock, or of any dividends, interest, profits or bonus payable or apportionable in respect thereof. 1 & 2 Vict. c. 96, s. 4.

No person or persons, or body or bodies politic or corporate, having or claiming to have any demand upon or against any such corporation or copartnership, shall bring more than one action or suit, in case the merits shall have been tried in such action or suit, in respect of such demand; and the proceedings in any action or suit, by or against any one of the public officers nominated as aforesaid for the time being of any such copartnership, may be pleaded in bar of any other action or actions, suit or suits, for the same demand, by or against any other of the public officers of such copartnership. 7 Geo. 4, c. 46, s. 10.

All and every decree or decrees, order or orders, made or pronounced in any suit or proceeding in any court of equity against any public officer of any such copartnership carrying on business under the provisions of that act, shall have the like effect and operation upon and against the property and funds of such copartnership, and upon and against the persons and property of every or any member or members thereof, as if every or any such members of such copartnership were parties members before the court to and in any such suit or proceeding; and any court in which such order or decree shall have been made may cause such order and decree to be enforced against every or any member of such copartnership, in like manner as if every member of such copartnership were parties before such court in such suit or proceeding, and although all such members are not before the court. *Ib.*, s. 11.

All and every judgment and judgments, decree or decrees, which shall at any time after the 26th May, 1826, be had or recovered or entered up as aforesaid, in any action, suit or proceedings in law or equity against any public officer of any such copartnership, shall have the like effect and operation upon and against the property of such copartnership, and upon and against the property of every such member thereof as aforesaid, as if such judgment or judgments had been recovered or obtained against such copartnership; and the bankruptcy, insolvency or stopping payment of any such public officer for the time being of such copartnership, in his individual character or capacity, shall not be nor be construed to be the bankruptcy, insolvency or stopping payment of such copartnership; and such copartnership and every member thereof, and the capital stock and effects of such copartnership, and the effects of every member of such copartnership, shall in all cases, notwithstanding the bankruptcy, insolvency or stopping payment of any such public officer, be attached and attachable, and be in all respects liable to the lawful claims and demands of the creditor and creditors of such copartner-

ship, or of any member or members thereof, as if no such bankruptcy, insolvency or stopping payment of such public officer of such copartnership had happened or taken place. 7 Geo. 4, c. 46, s. 12.

Execution upon any judgment in any action obtained against any public officer for the time being of any such corporation or copartnership carrying on the business of banking under the provisions of the act, whether as plaintiff or defendant, may be issued against any member or members for the time being of such corporation or copartnership; and in case any such execution against any member or members for the time being of any such corporation or copartnership shall be ineffectual for obtaining payment and satisfaction of the amount of such judgment, the party or parties so having obtained judgment against such public officer for the time being may issue execution against any person or persons who was or were a member or members of such corporation or copartnership at the time when the contract or contracts or engagement or engagements in which such judgment may have been obtained was or were entered into, or became a member at any time before such contracts or engagements were executed, or was a member at the time of the judgment obtained: provided always, that no such execution as last mentioned shall be issued without leave first granted, on motion in open court, by the court in which such judgment shall have been obtained, and which motion shall be made on notice to the person or persons sought to be charged, nor after the expiration of three years next after any such person or persons shall have ceased to be a member or members of such corporation or copartnership. *Ib.*, s. 13.

Execution upon judgment may be issued against any member of the copartnership.

It has been decided that the words "members for the time being" mean those who were members at the time when the execution on the judgment was issued. *Dodgson v. Scott*, 2 Exch. 457; see *Bradley v. Eyre*, 11 M. & W. 432. Proceedings may be taken by *scire facias* against a member for the time being, without the leave of the court. *Bank of Scotland v. Fenwick*, 1 Exch. 792.

The remedies given by this statute are not cumulative, but substituted for the prior liabilities of partners, and therefore proceedings cannot be taken against a party three years after he has ceased to be a member. *Barker v. Buttress*, 7 Beav. 134.

The legislature by this statute has not restricted the creditor to the common law liability of the debtors, but has made three other classes of persons liable: first, such as were parties at the time of the execution, and for want of them those who were members of the copartnership at the time the contract or agreement was entered into on which such judgment was obtained. The statute does not confine the remedy to persons who were partners at that time, but extends it to such as shall become members "at any time before such contract

Liability of members.

was executed;" so that, in the case of executory contracts, those are liable who are partners at the time of the execution of the contract, although they were not liable at common law. In the next place, this statute makes those liable who were members "at the time of the judgment obtained;" and those, also, who were not liable at common law. The object of the legislature was to treat these companies as corporations as to the mode of suing them, and to extend the remedy of the creditors to the partnership property by making each individual partner personally responsible for the debts of the partnership. The object of the legislature in allowing execution against persons who were not liable as contracting parties, and also against those, in the second degree, who were partners at the time the contract was executed or judgment obtained, and not at the time of the contract made, was upon the supposition that each person had all the means of applying the funds of the company, and ought to have applied them, to the payment of the partnership debts. The effect of the statute is to make those liable who are partners at the time the execution issues; and then, in the event of an execution against them being unsuccessful, the remedy is to be taken against those who were partners at the time of the contract, against those who were so at the time of the contract being completed, and against those who were so at the time of the judgment being obtained. The statute does not extend to such persons as have become partners after the completion of the contract, and who have ceased to be so before the judgment was obtained, although they were partners at the time the action was commenced. *Dodgson v. Scott*, 2 Exch. 457.

Proceedings
by *scire*
facias.

It is not competent for a plaintiff to issue process of execution against a person who does not upon the record appear to be a party to the judgment; but the proper mode of proceeding is by issuing a *scire facias* against the persons who were partners at the time, to give them an opportunity of pleading to the *scire facias* that they were not partners, or such other defence or answer as they may be able to establish. *Dodgson v. Scott*, 2 Exch. 457, see p. 465; *Bosanquet v. Ransford*, 12 Ad. & Ell. 813; 2 Q. B. 972; *Cross v. Law*, 6 M. & W. 217; *Harwood v. Law*, 7 M. & W. 203; *Clowes v. Brettell*, 10 M. & W. 506; *Bartlett v. Pentland*, 1 B. & Ad. 704. A *scire facias* is not necessary under the statutes 7 & 8 Vict. cc. 110 and 113, in order to obtain execution against a member of a joint stock banking company incorporated under either of those acts and judgment obtained against the public officer of such company. See *Foster on Scire Facias*, pp. 90—92.

Where the creditor of a joint stock banking company, under the 7 Geo. 4, c. 46, applies for leave to issue a *scire facias* against the members of the company at the time of the contract, he must show that he has made *bonâ fide* efforts to render

effectual the execution required to be previously issued against the members for the time being, therefore where judgment was obtained against the public officer on the 7th October, 1846, and on the following day a *fi. fa.* issued against him, which proved unproductive, and no further steps were taken until 1849, when an application was made for a *scire facias* against the members at the time of the contract: on affidavit that before the judgment all the shareholders who possessed any available property, except two, had ceased to be shareholders, and that the new shareholders were possessed of no property, the court refused a rule. Though a creditor of a banking copartnership is not bound to proceed at any particular time on his judgment against the public officer, yet whenever he issues execution he ought to endeavour to make it available against all the members of the copartnership. *Bank of England v. Johnson*, 3 Exch. 598.

Under stat. 7 Geo. 4, c. 46, s. 13, a party moving for a *scire facias* in order to have execution against former members of a banking company, on a judgment against the registered officer, must show that he has made substantial and *bonâ fide* endeavours to obtain an available execution against the present members; and the court will decide on the motion whether sufficient diligence has been used in the particular case. Where the plaintiff had only sued a registered officer of the banking company, who suffered judgment by default, and execution had thereupon issued, to which *nulla bona* was returned; and it appeared that the banking company had stopped payment, that several executions had issued against the registered officers, and thirty of the members had become bankrupt, and the plaintiff deposed that there were not to his knowledge goods of any of the present members on which a levy could be made, and that he had used every means in his power to gain information as to their present solvency, and believed that execution against them would be ineffectual; but it was sworn on the other side (on information and belief) that there were then 131 members of the copartnership, and that several of them (among whom were sixteen mentioned by name) were fully solvent, and that the company had assets: it was held, that sufficient ground was not shown for a *scire facias* against former members. *Eardley v. Law*, 12 Ad. & El. 802.

To prove that a party against whom such application is made was a shareholder at a given time, it is enough to produce certified stamp office returns made under sects. 4 and 5 of the 7 Geo. 4, c. 46, by a person styling himself "cashier" of the company. A party was named as a shareholder in one of such returns, but in the next return exhibited to the court, being of the same year, his name did not appear. On the plaintiff's part an affidavit was made of belief that the last-mentioned return was incorrect in omitting the name, and that the party continued a member beyond the time when it

Proof of
party being
shareholder.

was made : it was held to be sufficient ground for presuming that he did so continue, the party himself making affidavit in answer, and not stating any time when, or manner in which, he ceased to be a member, though he denied generally having been a member when the contracts now sued upon were made, and some of these were made before and some after the second return. It is no answer to the application for a *scire facias*, that a party supposed solvent who has ceased to be a member and is not named in the application was collusively and fraudulently for the purpose of protecting him from liability permitted to transfer his shares ; or that another party not named in the application, but still a member, would, if execution went against him, be entitled to indemnity from solvent persons, though unable to pay the amount himself. It is no answer on behalf of an individual included in the application that judgment is entered up in respect of several distinct causes of action, and that for one of these such party is not liable. But in the case of such party it was agreed on cause shown, and the court ordered that the writ should issue on an express undertaking by the plaintiff not to levy against him for more than was actually due. *Harvey v. Scott*, 11 Q. B., N. S. 92.

The court refused to set aside a rule which had been made absolute for a *scire facias* against former members of a banking copartnership, under the 7 Geo. 4, c. 46, s. 13, on the ground that the party by whom the rule had been obtained had omitted to disclose the fact of his holding a collateral security upon property belonging to the bank, which it was believed might, by management and care, be made productive to an amount exceeding the judgment debt. *Field v. Mackenzie*, 4 C. B. 725.

A party moving for a *scire facias*, under 7 Geo. 4, c. 46, s. 13, in order to have execution against former members of a banking company, on a judgment against the registered officer, must show that he has made substantial and *bonâ fide* endeavours to obtain an available execution against the members for the time being ; and the court will decide on the motion whether sufficient diligence has been used in the particular case. It is not necessary that execution should first be issued against all the members for the time being. *Wilde, C. J., dubitante*. Slight evidence that the parties sought to be charged as such were members at the time of the contract will suffice to induce the court to grant a rule for a *scire facias* against them, in the absence of affidavits on their part negating the facts constituting their liability. The court refused to allow the rule *nisi* to be drawn up for an earlier day than by the ordinary practice it would be drawn up, upon a suggestion that the period limited by the statute for proceedings against former members had nearly expired. *Field v. Mackenzie*, 4 C. B. 705.

Where judgment has been obtained against the public officer of a banking company, who is sued in their behalf under the 7 Geo. 4, c. 46, s. 9, the proper mode of proceeding to execution under the 12th and 13th sections of the same act, against a partner not being such officer is by *scire facias* and not suggestion. Where by leave of the court after judgment against the public officer a suggestion had been placed on the record that two persons were partners in the company, and an award of execution had been thereupon entered against such persons, the exchequer chamber set aside the award of execution. *Ransford v. Bosanquet*, 12 Ad. & El. 813.

It is no answer to a motion for leave to issue a *scire facias* upon a judgment record against the public officer of a joint stock banking company, against a person who was a member at the time the contract was entered into in respect of which the judgment has been recovered that such judgment was fraudulently concocted, such defence must be raised by plea or form the subject-matter of an application to set aside these proceedings as fraudulent. *Dodgson v. Scott*, 2 Exch. 457.

To obtain a *scire facias* against former members of a banking copartnership, under stat. 7 Geo. 4, c. 46, ss. 12 and 13, it is enough to show that executions after *scire facias* have been issued against several of the present partners and *nulla bona* returned; that reasonable inquiry has been made as to the solvency of all; and that there is on such inquiry ground for believing that execution would not be effected against any. On this last point a *prima facie* case is sufficient. *Harvey v. Scott*, 11 Q. B., N. S. 92.

Although plaintiffs may sue out execution under this statute when they please, they ought to try to make it effectual against all the members for the time being. Although the statute does not confine them to one execution but authorizes several against several members, plaintiffs cannot select one member and lie by and then begin again; but if they begin their execution they ought to go on with it with reasonable dispatch. *Bank of England v. Johnson*, 3 Exch. 598.

Where a member of a banking company sold his shares before the date of the contract on which the company was sued, and his name had been omitted in the return made to the stamp office, a wrong form of schedule having been adopted, the question as to his being a shareholder at the time of the contract is a matter to be tried on a *scire facias*. So where a *fi. fa.* has issued against the public officer, who is also a member of the company, it is a question to be tried whether it was issued against him as a member for the time being, or merely nominally against him as a public officer. *Bank of England v. Johnson*, 3 Exch. 598.

In an action by a banking copartnership suing in the name

of their public registered officer, under the 7 Geo. 4, c. 46, interrogatories under the 17 & 18 Vict. c. 125, s. 51, may be administered to the plaintiff. *M'Kewan v. Rolt*, 5 Jur. N. S. 714; 28 L. J., Exch. 380.

Collusion of
creditor with
company.

Directors allowed a judgment to go by default against a public company, which a creditor proceeded to enforce against the shareholders: it was held, that the shareholders could not in the absence of collusion and concert question as against the creditor in equity the validity of the original debt, or discuss whether the action could have been successfully resisted by the company. Where a creditor obtained a judgment against a company and proceeded to enforce it against several shareholders, the court considered that he was bound to give credit to one shareholder whom he sued for monies previously received from the others; but the court would not disturb the appropriation of part of the monies the creditor had received in payment of his costs of his ineffectual proceedings against other shareholders. *Green v. Nixon*, 23 Beav. 530; 3 Jur. N. S. 993; 27 L. J., Ch. 819.

Injunction.

Where a court of law, acting under 7 & 8 Vict. c. 110, had given to one shareholder judgment against a company which had no assets, the Court of Chancery would not prevent the execution of such judgment against another shareholder. *Hardinge v. Webster*, 1 Drew. & S. 101; 6 Jur. N. S. 88; 29 L. J., Ch. 161.

A creditor who has obtained judgment against a company, and who can lawfully execute such judgment against the individual members of the company, will not be restrained by the Court of Chancery from executing such judgment against any member or members he may choose to select. *Morisse v. Royal British Bank*, 1 C. B., N. S. 67; *Green v. Nixon*, 23 Beav. 530.

Proceedings
against exe-
cutors of
members.

The executors of one whose name has since his decease been inserted in the last filed memorial or return (under the 7 & 8 Vict. c. 113, s. 16), are not liable to execution on a judgment against the company, although the testator was properly returned as a shareholder in previous memorials. *Powis v. Butler*, 4 C. B., N. S. 479; 4 Jur. N. S. 614; 27 L. J., C. P. 249—Exch. Cham.

A private act incorporated the shareholders of a company, and provided that any judgment against the company might be enforced (after due diligence against the property of the company) against the person, property and effects of any shareholder for the time being, or any former shareholder, in his natural or individual capacity, where such former shareholder was a shareholder at the time of making the contract in respect of which the judgment had been obtained. It was held, that an executor who was a shareholder at the time of the execution of a bond by the company, and who so continued until his death, but who died before judgment on the bond,

had been obtained against the company, was not liable on a *scire facias* against the goods of the deceased. *Poole v. Knott*, 5 Jur. N. S. 1393; 28 L. J., Q. B. 322.

A judgment was obtained in a court of record at Dublin against the official manager of an Irish joint stock banking company for a large sum; the amount due was reduced by subsequent payments in the name of the defendant. The plaintiff executed a warrant of attorney under the 6 Geo. 4, c. 42, s. 12, to confess judgment for the sum remaining due, and judgment was signed in the Court of Queen's Bench here. Subsequently the plaintiff executed a fresh warrant to confess judgment for the sum for which judgment had been signed in the Irish court, and judgment was signed accordingly. On the latter judgment a *scire facias* was issued against a shareholder. On his motion to set it aside: it was held, that the provisions in the 6 Geo. 4, c. 42, s. 12, for enforcing judgments against the public officers of banking companies in Ireland were, by the 11 & 12 Vict. c. 45, made applicable to judgments against official managers, and that the judgment on which the *scire facias* proceeded was regular. The object of the act being not to require the commencement of a new suit, but to make the Irish judgment equivalent to an English judgment, by providing that the English judgment should be, not for the sum due on the Irish judgment, but for the sum for which the Irish judgment was "obtained." *Walker v. Goodyer*, 7 El. & Bl. 960; 3 Jur. N. S. 1078.

A creditor having obtained a judgment against the official manager of a banking company, registered the judgment against the real estate of a former shareholder in the company, without issuing a *scire facias*: it was held, that a court of equity ought to give relief against such registration, as being a cloud on the shareholder's title to his lands. *Hone v. O'Flahertie*, 9 Ir. Ch. Rep. 119.

The garnishee clauses, viz., sects. 61, 62, 63, 64 and 65 of the 17 & 18 Vict. c. 125, apply to funds in the hands of an official manager of a company in progress of being wound-up, which company is indebted to a judgment debtor of the creditor. *Ex parte Turner, Re Warwick and Worcester Railway Company*, 30 L. J., Ch. 92—L. J.

The statute 7 Geo. 4, c. 46, does not contain any provision relating to the transfer of shares, except by requiring that a notification of every change of membership shall be made to the stamp office. Shares, therefore, in such a banking company are transferable only according to the mode pointed out by the particular deed of settlement. This mode must be strictly pursued, for each shareholder is responsible for the common liability, and it is the right of each that no shareholder shall divest himself of that liability, except in the form and mode agreed upon and prescribed by the deed. Therefore, where the deed requires that the transferee of shares

Public officer.

Registration of judgment.

Attaching funds in hands of official manager.

Transfer of shares.

shall be approved of by a "board of directors," the approval certificate, although signed by a proper proportion of directors, is insufficient if not given at a "board," and the transferor still remains a shareholder. *Bosanquet v. Shertridge*, L. J. 1851, Exch. 57; *Ness v. Angus*, L. J. 1849, Exch. 470; Wordsworth on Joint Stock Companies, pp. 170, 171, 6th ed.

Shares in a joint stock bank formed under the 7 Geo. 4. c. 46, the property of which consisted in part of freehold and copyhold estates and mortgages for terms of years, are not within the act 9 Geo. 2, c. 36, and may therefore be bequeathed for charitable purposes. *Myers v. Perigal*, 11 C. B. 90; 2 De G., M. & G. 599; *contra*, 16 Sim. 533; see *Bligh v. Brent*, 2 Y. & C. 268.

Dissolution
of joint-stock
bank.

A joint stock banking company may be dissolved as between the several shareholders, and yet subsist with reference to other parties for the purpose of winding-up their affairs, and they remain entitled to the privileges of the 7 Geo. 4. c. 46, up to the last moment. A dissolution, to be binding upon all the shareholders, must be come to and decided upon in conformity with the stipulations in that behalf contained in the deed of settlement. The company then becomes *ipse facto* dissolved. But when the dissolution has been once declared, the members present at any meeting held for that purpose have no legal authority to bind absent shareholders unless it be expressly given, even to an arrangement for realising the assets and discharging the liabilities of the company and dividing the surplus. But such an arrangement between the shareholders is expedient, for without it any one of them might receive payment of the debts due to the company, and each shareholder would have to concur in the endorsing and disposing of the securities of the company, and in settling the engagements into which they may have entered during their partnership. *Davidson v. Cooper*, 11 M. & W. 778; *Lyon v. Haynes*, 6 Scott's N. R. 371, see p. 413; Man. & G. 504; Wordsworth on Joint Stock Companies, pp. 172, 173, 6th ed.

Stock and
shares in
public funds
and public
companies
belonging to
the debtor
and standing
in his own
name to be
charged by
order of a
judge.

If any person against whom any judgment shall have been entered up in any of her Majesty's superior courts at Westminster shall have any government stock, funds or annuities or any stock or shares of or in any public company in England (whether incorporated or not) standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of one of the superior courts, on the application of any judgment creditor, to order that such stock, funds, annuities or shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor: provided that no pro-

ceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order. 1 & 2 Vict. c. 110, s. 14.

A banking copartnership, which made returns to the stamp office, pursuant to 7 Geo. 4, c. 46, was held to be a public company not incorporated within the meaning of the last section. *Macintyre v. Connell*, 1 Sim. N. S. 225; 20 L. J., Ch. 284; 15 Jur. 529.

The defendant held shares in the Union Bank of London, and judgment having been obtained in an action against him, a judge at chambers made an order under the last section, charging such shares with the judgment debt. On application to set aside such order, it appeared that the bank consisted of a great number of shareholders, and was carried on pursuant to the terms of a deed of settlement, by which it was provided, that the shares should not be transferred except by the consent of the directors, and also that if any order or decree was made against any proprietor, by which his shares became charged, they were to be forfeited to the company. The company was not registered under 7 & 8 Vict. c. 110, but was entitled to sue and be sued by a public officer under 7 & 8 Vict. c. 113, s. 47, and 7 Geo. 4, c. 46: it was held by Parke, B., and Alderson, B., that it being doubtful whether the company was a public company or not, the order ought not to be set aside. *Graham v. Connell*, 1 Pr. Rep. 38; 19 L. J., Exch. 361.

The defendant, a registered owner of shares in a joint stock company, deposited the certificate with E. as a security for money advanced. The defendant afterwards borrowed a further sum from an insurance office, and executed to C., one of his sureties on that occasion, with the consent of E., who was the other surety, a transfer of the shares, accompanied by a declaration of the terms of the transfer, and delivered both instruments to C. The money not having been paid to the insurance office, they claimed it from E. and C., when C. requested the insurance office to transfer the shares into his name, which they refused to do on the ground that they had been previously served with a judge's order nisi to charge the shares: it was held, that the shares were properly charged as shares standing in the defendant's name in his own right within the meaning of the 14th sect. 1 & 2 Vict. c. 110. *Fuller v. Earle*, 7 Exch. 796; 21 L. J., Exch. 314. See other cases on this section, Shelford's Real Property Statutes, pp. 547—549, 6th ed.

It was questioned whether a mining company on the cost-book principle is a public company within the meaning of the 1 & 2 Vict. c. 110, s. 14, so as to make shares therein liable to be charged with a judgment debt. *Nicholls v. Rosewarne*, 6 C. B., N. S. 480; see *ante*, p. 3, n. (e). An order having been made by a judge at chambers, the court confirmed it, on the ground that, by setting it aside, they would preclude the

judgment creditor from taking the opinion of a court of appeal. *Nicholls v. Rosewarne*, 6 C. B., N. S. 480. It was questioned whether one who has sold his shares in such a company, and whose vendee has accepted the transfer, but has not caused it to be registered, is a person having shares "standing in his name in his own right" within the 1 & 2 Vict. c. 10, s. 14. *Ibid.*

The forms of proceedings by and against banking companies entitled to sue and be sued in the name of a public officer will be found in Chitty's Forms, pp. 662—667, 9th edit.

Officers, &c.
in such cases
indemnified.

Every such public officer in whose name any such suit or action shall have been commenced, prosecuted or defended, and every person or persons against whom execution upon any judgment obtained or entered up as aforesaid in any such action shall be issued as aforesaid, shall always be reimbursed and fully indemnified for all loss, damages, costs and charges, without deduction, which any such officer or person may have incurred by reason of such execution, out of the funds of such copartnership, or in failure thereof, by contribution from the other members of such copartnership, as in the ordinary cases of copartnership. 7 Geo. 4, c. 46, s. 14; see *ante*, pp. 281, 282.

Execution
under 7 & 8
Vict. c. 113.

It is not an answer to an application for execution against a shareholder of a joint stock bank, under the 10th sect. of 7 & 8 Vict. c. 113, that he was induced by the directors' fraud to purchase shares, and that he repudiated them as soon as he discovered the fraud and before such application. A person whose name is inserted in the memorial required by the 16th section of that act to be returned to the stamp office is liable as a shareholder, although it is not in the form prescribed by that act. *Daniell v. Royal British Bank*, 1 H. & N. 681; 3 Jur. N. S. 119. See *Fry v. Russell*, 3 C. B. 665. as to the liability of a shareholder to execution under the last act, notwithstanding a transfer by him and the registration of the transfer.

GENERAL ORDER & RULES

OF THE

High Court of Chancery,

TO REGULATE THE MODE OF PROCEEDING
UNDER THE COMPANIES ACT, 1862.

ISSUED BY THE LORD HIGH CHANCELLOR.

(Tuesday, 11th November, 1862.)

THE Right Honorable RICHARD BARON WESTBURY, Lord High Chancellor of Great Britain, with the advice and consent of the Right Honorable Sir JOHN ROMILLY, Master of the Rolls, the Honorable the Vice-Chancellor Sir RICHARD TORIN KINDERSLEY, the Honorable the Vice-Chancellor Sir JOHN STUART, and the Honorable the Vice-Chancellor Sir WILLIAM PAGE WOOD, doth hereby, in pursuance and execution of the powers given by the statute 25th and 26th Victoria, chapter 89 (*a*), and of all other powers and authorities enabling him in that behalf, order and direct in manner following:

(*a*) See sect. 170, *ante*, p. 209.

PETITION TO WIND-UP COMPANY (*b*).

1. Every petition for the winding-up of any company by the court, or subject to the supervision of the court, shall be intituled in the matter of "The Companies Act, 1862," and of the company to which such petition shall relate, describing the company by its most usual style or firm (*c*).

(*b*) See sects. 82, 148, *ante*, pp. 82, 178.

(*c*) The first rule of the twenty-third Consolidated Gene-

ral Orders and the interpretation clause therein, apply to the rules of this order. See Rule 77, *post*.

The interpretation clause referred to is as follows :—

Interpreta-
tion of words
in this order.

In any decree or order where the words “the judge” are used, such expression shall mean the judge in whose court the cause or matter wherein such decree or order is made is for the time being attached. Where the words “the taxing master” are used, such expression shall mean the taxing master in rotation; or in case any previous reference shall have been made, the taxing master to whom the cause or matter stands referred, as the case may be. And where the words “the clerk of the records and writs” are used, such expression shall mean the clerk of the records and writs in whose division the cause or matter wherein such order is made. 23 Consolidated Gen. Order, Rule 1.

2. Every such petition shall be advertised seven clear days before the hearing, as follows (*d*):

(1.) In the case of a company whose registered office, or if there shall be no such office, then whose principal or last known principal place of business is or was situate within ten miles from Lincoln’s Inn Hall, once in the London Gazette and once at least in two London daily morning newspapers.

(2.) In the case of any other company once in the London Gazette and once at least in two local newspapers circulating in the district where such registered office, or principal, or last known principal place of business, as the case may be, of such company is or was situate.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any).

(*d*) See form, No. 1, *post*.

3. Every such petition shall, unless presented by the company, be served at the registered office, if any, of the company, and if no registered office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer or servant of the company there, or in case no such member, officer or servant can be found there, then by being left at such registered office or principal place of business,

or by being served on such member or members of the company as the court may direct; and every petition for the winding-up of a company subject to the supervision of the court, shall also be served upon the liquidator (if any) appointed for the purpose of winding-up the affairs of the company (e).

(e) See sect. 62, *ante*, p. 69, n. (d).

4. Every petition for the winding-up of any company by the court, or subject to the supervision of the court, shall be verified by an affidavit referring thereto, in the form or to the effect set forth in Form No. 2 in the third Schedule hereto; such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by the company, by some director, secretary or other principal officer thereof; and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

5. Every contributory or creditor of the company shall be entitled to be furnished, by the solicitor to the petitioner, with a copy of the petition, within twenty-four hours after requiring the same, on paying at the rate of fourpence per folio of seventy-two words for such copy.

ORDER TO WIND-UP COMPANY (f).

6. Every order for the winding-up of a company by the court, or subject to its supervision, shall, within twelve days after the date thereof, be advertised by the petitioner once in the London Gazette, and shall be served upon such persons (if any) and in such manner as the court may direct (g).

(f) See sects. 82, 85, 86, 147, *ante*, pp. 104—106, 173.

(g) See Form of Advertisement, *post*, No. 5.

7. A copy of every order for winding-up a company, certified to be a true copy thereof as passed and entered, shall be left by the petitioner at the

chambers of the judge, within ten days after the same shall have been passed and entered, and in default thereof any other person interested in the winding-up may leave the same, and the judge may, if he thinks fit, give the carriage and the prosecution to such person. Upon such copy being left a summons shall be taken out to proceed with the winding-up of the company, and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons, a time shall, if the judge thinks fit, be fixed for the appointment of an official liquidator, and for the proof of debts, and for the list of contributions to be brought in, and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and, when necessary, by further summons, and any such direction as aforesaid may be given, added to or varied, at any subsequent time, as may be found necessary.

OFFICIAL LIQUIDATOR (*h*).

8. The judge may appoint a person to the office of official liquidator, without previous advertisement or notice to any party, or fix a time and place for the appointment of an official liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated.

(*h*) See sects. 85, 92, 93, 103, 104, *ante*, pp. 105, 109, 110, 155, 156.

9. When a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertized in such manner as the judge shall direct, so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed (*i*).

(*i*) See forms, Nos. 6, 7, *post*.

10. Every official liquidator shall give security by entering into a recognizance with two or more sufficient sureties (*h*), in such sum as the judge may approve; and the judge may, if he shall think fit, accept the security of any guarantee society established by charter or act of parliament in England, in lieu of the security of such sureties as aforesaid, or of any of them.

(*h*) See form, No. 10, *post*.

11. The official liquidator shall be appointed by order (*l*); and unless he shall have given security, a time shall be fixed by such order within which he is to do so; and the order shall fix the times or periods at which the official liquidator is to leave his accounts of his receipts and payments at the judge's chambers (*m*), and shall direct that all monies to be received shall be paid into the Bank of England, immediately after the receipt thereof, to the account of the official liquidator of the company, and an account shall be opened there accordingly; and an office copy of the order shall be lodged at the Bank of England (*n*).

(*l*) See form, No. 8, *post*.

(*m*) See Rule 19, *post*, p. 301.

(*n*) See Rules 36—44, and forms, Nos. 10, 11, 14, *post*.

12. When an official liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by the chief clerk, as in the case of a receiver appointed in a cause subject to giving security.

13. The official liquidator shall, on each occasion of passing his account (*o*), and also whensoever the judge may so require, satisfy the judge that his sureties are living, and resident in Great Britain, and have not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security within such time as shall be directed.

(*o*) See Rule 19, *post*, p. 301.

14. Every appointment of an official liquidator shall be advertized, in such manner as the judge shall direct, immediately after he has been appointed, and has given security (*p*).

(*p*) See form, No. 15, *post*.

15. Where it is desired to appoint provisionally an official liquidator (*q*), an application for that purpose may, at any time after the presentation of the petition for winding-up the company, be made by summons, without advertisement or notice to any person, unless the judge shall otherwise direct; and such provisional liquidator may, if the judge shall think fit, be appointed without security.

(*q*) See sects. 85, 92, *ante*, pp. 105, 109; Rule 59, Form No. 9, *post*.

16. In case of the death, removal or resignation of an official liquidator, another shall be appointed in his room, in the same manner as directed in the case of a first appointment, and the proceedings for that purpose may be taken by such party interested as may be authorized by the judge to take the same.

17. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete and rectify the books of account of the company; and shall provide and keep such books of account as shall be necessary, or as the judge may direct, for the purposes aforesaid, and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the said act and these rules.

18. The official liquidator shall be allowed in his accounts, or otherwise paid, such salary or remuneration as the judge may from time to time direct, including any necessary employment of assistants or clerks by the official liquidator, to which regard

shall be had; and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter, as the judge may think fit. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the official liquidator, on notice to such persons (if any), and supported by such evidence as the judge shall require; nevertheless, the judge may from time to time allow any sum he may think fit to the official liquidator, on account of the salary or remuneration to be thereafter allowed.

19. The accounts of the official liquidator shall be left at the judge's chambers at the times directed by the order appointing him, and at such other times as may from time to time be required by the judge, and such accounts shall, upon notice to such parties (if any) as the judge shall direct, be passed and verified in the same manner as receivers' accounts.

PROOF OF DEBTS (*r*).

20. For the purpose of ascertaining the debts and claims due from the company, and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued at such time as the judge shall direct; and such advertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the official liquidator, and appoint a day for adjudicating thereon (*s*).

(*r*) See sects. 107, 158, *ante*, pp. 156, 182.

(*s*) See Form of Advertisement, No. 16, *post*.

21. The creditors need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator; but upon such notice being given, they are to come in and prove their debts or claims within a time to be therein specified.

22. The official liquidator shall investigate the debts and claims sent in to him, and ascertain, so far as he is able, which of such debts and claims are justly due from the company; and he shall make out and leave at the chambers of the judge, a list of all the debts and claims sent in to him, distinguishing which of the debts and claims, or parts of debts and claims so claimed, are, in his opinion, justly due and proper to be allowed without further evidence, and which of them, in his opinion, ought to be proved by the creditors; and he shall make and file, prior to the time appointed for adjudication, an affidavit, setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief (*t*).

(*t*) See form, Nos. 17, 18, *post*.

23. At the time appointed for adjudicating upon the debts and claims, or at any adjournment thereof, the judge may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed; and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed, of such allowance (*u*).

(*u*) See form, No. 19, *post*.

24. The official liquidator shall give notice to the creditors whose debts or claims have not been allowed upon his affidavit, that they are required to come in and prove the same by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time-appointed by the advertisement, or by adjournment (as the case may be) for adjudicating upon such debts and claims (*x*).

(*x*) See forms, Nos. 20, 21, *post*.

25. The value of such debts and claims as are made admissible to proof by the 158th section of the said act (*y*), shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind-up the company.

(*y*) *Ante*, p. 182.

26. Interest on such debts and claims as shall be allowed shall be computed, as to such of them as carry interest, after the rate they respectively carry; any creditor whose debt or claim so allowed does not carry interest shall be entitled to interest, after the rate of 4*l.* per centum per annum, from the date of the order to wind-up the company, out of any assets which may remain after satisfying the costs of the winding-up, the debts and claims established, and the interest of such debts and claims as by law carry interest.

27. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator shall be allowed their costs of proof, in the same manner as in the case of debts proved in a cause.

28. The result of the adjudication upon debts and claims shall be stated in a certificate to be made by the chief clerk, and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner (*z*).

(*z*) See forms, Nos. 22, 23, *post*.

LIST OF CONTRIBUTORIES (*a*).

29. The official liquidator shall, with all convenient speed after his appointment, or at such time as the judge shall direct, make out and leave at the chambers of the judge a list of the contributories of the company; and such list shall be verified by the affidavit of the official liquidator, and shall, so far as is practicable, state the respective addresses

of, and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories. And such list may from time to time, by leave of the judge, be varied or added to, by the official liquidator (*b*).

(*a*) See sects. 98, 99, *ante*; p. 114.

(*b*) See forms, Nos. 24, 25, 29, 30, 32, *post*.

30. Upon the list of contributories being left at the chambers of the judge, the official liquidator shall obtain an appointment for the judge to settle the same, and shall give notice in writing of such appointment to every person included in such list, and stating in what character, and for what number of shares or interest, such person is included in the list; and, in case any variation or addition to such list shall at any time be made by the official liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition (*c*).

(*c*) See forms, Nos. 26, 27, *post*.

31. The result of the settlement of the list of contributories shall be stated in a certificate by the chief clerk; and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list (*d*).

(*d*) See form, No. 31, *post*.

SALES OF PROPERTY (*e*).

32. Any real or personal property belonging of the company may be sold with the approbation of the judge, in the same manner as in the case of a sale under a decree or order of the court in a suit, or, if the judge shall so direct, by the official liquidator; and upon any such sale by the official liqui-

dator, the conditions or contracts of sale shall be settled and approved of by the judge, unless he shall otherwise direct; and the judge may, if he thinks fit, direct such conditions and contracts, and the abstract of the title to the property, to be submitted to one of the conveyancing counsel of the court, under the 2nd of the Consolidated General Orders (*f*), and may, on any sale by public auction, fix a reserved bidding; and, unless on account of the small amount of the purchase monies or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper that the purchase monies shall be paid to him, all conditions and contracts of sale shall provide that the purchase monies shall be paid by the respective purchasers into the bank of England, to the account of the official liquidator of the company.

(*e*) See sects. 94, 95, 103, *ante*, pp. 111, 155.

(*f*) See Morgan's Chancery Acts and Orders, pp. 355, 356.

CALLS (*g*).

33. Every application to the judge to make any call on the contributories or any of them, for any purpose authorized by the said act, shall be made by summons, stating the proposed amount of such call; and such summons shall be served, four clear days at the least before the day appointed for making the call, on every contributory proposed to be included in such call; or if the judge shall so direct, notice of such intended call may be given by advertisement (*h*).

(*g*) See sects. 102, 120, *ante*, pp. 153, 163.

(*h*) See forms, Nos. 33—35, *post*.

34. When any order for a call has been made, a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice from the official liquidator specifying the amount or balance due from such contributory (having regard to the provisions of the said act) in respect of such call; but such order need not be

advertized unless, for any special reason, the judge shall so direct (*i*).

(*i*) See forms, Nos. 36, 37, *post*.

35. At the time of making an order for a call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary; and at the time appointed by any such adjournment, or upon a summons to enforce payment of the call, duly served, and upon proof of the service of the order (*k*) and notice of the amount due, and non-payment, an order may be made for such of the contributories who have made default, or of such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively.

(*k*) See forms, Nos. 38, 39, 42, *post*.

PAYMENT IN OF MONIES AND DEPOSIT OF SECURITIES (*l*).

36. If any official liquidator shall not pay all the monies received by him into the bank of England, to the account of the official liquidator of the company, within seven days next after the receipt thereof, unless the judge shall have otherwise directed, such official liquidator shall be charged in his account with 10s. for every 100*l.*, and a proportionate sum for any larger amount, retained in his hands beyond such period, for every seven days during which the same shall have been so retained, and the judge may, for any such retention, disallow the salary or remuneration of such official liquidator.

(*l*) See Sects. 103, 104, *ante*, pp. 156, 157.

37. All bills, notes and other securities payable to the company or the official liquidator thereof

shall, as soon as they shall come to the hands of such official liquidator, be deposited by him in the bank of England for the purpose of being presented by the bank for acceptance and payment, or for payment only, as the case may be.

38. All orders for payment of calls, balances or other monies due from any contributory or other person shall direct the same to be paid into the bank of England, to the account of the official liquidator of the company, unless, on account of the smallness of the amount or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator. Provided that where any such order has been made directing payment of a specific sum into the bank of England, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof, or for any other reason, an order may, either before service of such former order or after the time thereby fixed for payment, be made, without notice, for payment of the same sum to the official liquidator.

39. At the time of the service of any order for payment into the bank of England, the official liquidator shall give to the party served a notice, to the purport or effect set forth in form No. 40 in the third schedule hereto, for the purpose of informing him how the payment is to be made; and before the time fixed for such payment the official liquidator shall furnish the cashier of the bank of England with a certificate, to the purport or effect set forth in form No. 41 in the third schedule hereto, to be signed by such cashier, and delivered to the party paying in the money therein mentioned.

40. For the purpose of enforcing any order for payment of money into the bank of England an affidavit of the official liquidator, to the purport or effect set forth in form No. 43 in the third schedule hereto, shall be sufficient evidence of the nonpayment thereof.

41. All monies, bills, notes and other securities paid and delivered into the bank of England shall be placed to the credit of the account of the official liquidator of the company; and orders for any such payment and delivery shall direct the same accordingly.

DELIVERY OUT OF SECURITIES, AND PAYMENT OUT
AND INVESTMENT OF MONIES (*m*).

42. All bills, notes and other securities delivered into the bank of England shall be delivered out upon a request signed by the official liquidator, and countersigned by the chief clerk of the judge; and monies placed to the account of the official liquidator shall be paid out upon cheques or orders, signed by the official liquidator, and countersigned by the chief clerk of the judge.

(*m*) See sects. 103, 104, *ante*, pp. 155, 156.

43. All or any part of the money for the time being standing to the credit of the account of the official liquidator at the bank of England, and not immediately required for the purposes of the winding-up, may be invested in the purchase of Bank £3 per Cent. Annuities, Reduced £3 per Cent. Annuities, New £3 per Cent. Annuities, or New £2:10s. per Cent. Annuities, in the name of the official liquidator, or in the purchase of exchequer bills. All such investments shall be made by the bank of England, upon a request signed by the official liquidator, and countersigned by the chief clerk of the judge, and which request shall be a sufficient authority for debiting the account with the purchase money; and such exchequer bills, and in case of an exchange thereof any new exchequer bills, shall be retained by or deposited with the bank of England, in the name and on behalf of the official liquidator; and such annuities or exchequer bills shall not afterwards be sold or transferred or otherwise dealt with except upon a direction for that

purpose, signed by the official liquidator, and countersigned by the chief clerk of the judge, or under an order to be made by the judge (*n*).

(*n*) See form, No. 44, *post*.

44. All dividends and interest to accrue due upon any such annuities shall from time to time be received by the bank of England, under a power of attorney to be executed by the official liquidator, and placed to the credit of the account of such official liquidator; and such of the exchequer bills as shall from time to time be in course of payment, shall be delivered by the bank of England to one of their cashiers, who is to receive the interest due thereon, and exchange the same for new bills, in case such new bills are issued, or otherwise to receive the principal and interest due on such of the said bills, so in course of payment, as cannot be exchanged, and pay the said interest, or principal and interest, as the case may be, into the bank of England to the credit of the account of the official liquidator of the company.

MEETINGS OF CREDITORS OR CONTRIBUTORIES.

45. When the judge shall direct a meeting of the creditors or contributories of the company to be summoned under the 91st or 149th section (*o*) of the said act, the official liquidator shall give notice in writing, seven clear days before the day appointed for such meeting, to every creditor or contributory, of the time and place appointed for such meeting, and of the matter upon which the judge desires to ascertain the wishes of the creditors or contributories; or, if the judge shall so direct, such notice may be given by advertisement, in which case the object of the meeting need not be stated, and it shall not be necessary to insert such advertisement in the London Gazette.

(*o*) *Ante*, pp. 109, 178.

46. The votes of the creditors or contributories of the company at any meeting summoned by the

direction of the judge, may be given either personally or by proxy; but no creditor shall appoint a proxy who is not a creditor of the company whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the company.

47. The direction of the judge for any meeting of creditors or contributories under the 91st or 149th section of the said act, and the appointment of a person to act as chairman of any such meeting, shall be testified by a memorandum signed by the chief clerk of the judge.

DIRECTION OR SANCTION OF THE JUDGE.

48. The sanction of the judge to the drawing, accepting, making and indorsing of any bill of exchange or promissory note by any official liquidator shall be testified by a memorandum on such bill of exchange or promissory note, signed by the chief clerk of the judge.

49. Every application for the sanction of the judge to a compromise with any contributory or other person indebted to the company shall be supported by the affidavit of the official liquidator that he has investigated the affairs of such contributory or person, and stating his belief that the proposed compromise will be beneficial to the company, and his reasons for such belief; and the sanction of the judge thereto shall be testified by a memorandum, signed by the chief clerk of the judge, on the agreement of compromise, unless any party shall desire to appeal from the decision of the judge, in which case an order shall be drawn up for that purpose.

50. The direction or sanction of the judge for any other proceeding or act to be taken or done by the official liquidator shall be obtained upon summons, and an order shall be drawn up thereon, unless the judge shall otherwise direct.

APPLICATIONS TO THE COURT OR JUDGE UNDER
SECTS. 137, 138, 141, 167 AND 168 OF THE ACT.

51. Every application under the 137th, 138th or 141st (*p*) section of the said act shall be made by petition or motion, or, if the judge shall so direct, by summons at chambers; and every application under the 167th or 168th section of the said act shall be made by petition (*q*).

(*p*) *Ante*, pp. 174—176.

(*q*) *Ante*, p. 208.

ORDERS.

52. All orders made in chambers shall be drawn up in chambers, unless specially directed to be drawn up by the registrar, and shall be entered in the same manner, and in the same office, as other orders made in chambers (*r*).

(*r*) See Rule 74, *post*.

ADVERTISEMENTS.

53. When an advertisement is required for any purpose, except where otherwise directed by these rules, the advertisement shall be inserted once in the London Gazette, and in such other newspaper or newspapers, and for such number of times as may be directed. The judge may, in such cases as he shall think fit, dispense with any advertisement required by these rules (*s*).

(*s*) See Rules 73, 74, *post*.

ADMISSION OF DOCUMENTS.

54. Any party to any proceeding in court or chambers relating to the winding-up of a company may, by notice in writing in the form No. 6, in schedule (N.) (*t*) to the Consolidated General Orders, or to the like effect, call on any other party thereto competent to admit the same, to admit any document, saving all just exceptions; and in case of refusal or neglect so to admit, the costs of proving such document shall be paid by the party so re-

fusing or neglecting, unless the judge shall be of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice shall have been given, except in cases where the omission to give such notice has been, in the opinion of the taxing master, a saving of expense.

(*t*) See Morgan's Chancery Acts and Orders, pp. 631—633.

AFFIDAVITS (*u*).

55. Where an order shall have been made for the winding-up of any company, any person intending to use any affidavit in any proceeding under such order, shall file the same in the Record and Writ Clerks' Office, and give notice thereof to the official liquidator. The person, other than the official liquidator, filing the affidavit shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used, unless the judge shall otherwise direct.

(*u*) See Rule 74, *post*.

CERTIFICATE OF CHIEF CLERK.

56. The 48th, 49th, 50th, 51st, 52nd and 55th rules of the 35th of the Consolidated General Orders (*x*), shall apply to all certificates of the chief clerk in the matter of the winding-up of any company; nevertheless, certificate on passing the official liquidator's accounts may be approved and signed by the judge without delay, and upon being so signed shall be filed and forthwith acted upon.

(*x*) See Morgan's Chancery Acts and Orders, pp. 540—542, 3rd ed.

REGISTER AND FILE OF PROCEEDINGS.

57. A register shall be kept of all proceedings in the judge's chambers, in each matter, in the same manner as required by the 57th rule of the 35th of

the Consolidated General Orders, and no documents or proceedings are to be filed in the judge's chambers, unless the judge shall otherwise direct (*y*).

(*y*) See Morgan's Chancery Acts and Orders, p. 542.

58. All orders, exhibits, admissions, memorandums and office copies of affidavits, examinations, depositions and certificates, and all other documents relating to the winding-up of any company, shall be filed by the official liquidator, as far as may be, in one continuous file, and such file shall be kept by him, or otherwise, as the judge may from time to time direct. Every contributory of the company, and every creditor thereof whose debt or claim has been allowed, shall be entitled, at all reasonable times, to inspect such file free of charge, and, at his own expense, to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding three-halfpence per folio of seventy-two words; and such file shall be produced in court, or before the judge, and otherwise, as occasion may require.

PROVISIONAL OFFICIAL LIQUIDATORS.

59. All the above rules relating to official liquidators shall, so far as the same are applicable, and subject to the directions of the judge in each case, apply to provisional official liquidators (*z*).

(*z*) See Rule 15, *ante*, p. 300.

ATTENDANCE AND APPEARANCE OF PARTIES (*a*).

60. Every person, for the time being, on the list of contributories of the company, left at the chambers of the judge by the official liquidator, and every person having a debt or claim against the company, allowed by the judge, shall be at liberty, at his own expense, to attend the proceedings before the judge, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the judge shall be

of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

(a) See sects. 74, 159, 160, *ante*, pp. 76, 183.

61. The judge may from time to time appoint any one or more of the contributories or creditors as he thinks fit, to represent before him, at the expense of the company, all or any class of the contributories or creditors, upon any question as to a compromise with any of the contributories or creditors, or in and about any other proceeding before him relating to the winding-up of the company, and may remove the person or persons so appointed. In case more than one person shall be appointed, they shall unite in employing the same solicitor to represent them.

62. No contributory or creditor shall be entitled to attend any proceedings at the chambers of the judge, unless and until he has entered in a book to be kept there for that purpose his name and address, and the name and address of his solicitor (if any), and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor (*b*).

(b) See form, No. 53, *post*.

SERVICES OF SUMMONSES, NOTICES, &c. (*c*).

63. Services upon contributories and creditors shall be effected (except when personal service is required) by sending the notice, or a copy of the summons or order or other proceeding, through the post in a pre-paid letter, addressed to the solicitor of the party to be served (if any) or otherwise to the party himself at the address entered or last entered pursuant to the preceding rule; or if no such entry has been made, then, if a contributory

to his last known address or place of abode; and if creditor, to the address given by him, pursuant to the foregoing rule 20; and such notice, or copy summons, order or other proceeding shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post-office, and notwithstanding the same may be returned by the post-office.

(c) See sects. 62, 63, *ante*, p. 69; Rule 74, *post*.

64. No service under these rules shall be deemed invalid by reason that the christian name, or any of the christian names of the person on whom service is sought to be made, has been omitted, or designated by initial letters, in the list of contributories, or in the summons, order, notice or other document wherein the name of such contributory or creditor is contained, provided the judge is satisfied that such service is in other respects sufficient.

TERMINATION OF WINDING-UP (*d*).

65. Upon the termination of the proceedings in chambers for the winding-up of any company, a balance sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavit; and the official liquidator shall pass his final account, and the balance (if any) due thereon shall be certified. And upon payment of such balance, in such manner as the court or judge shall direct, the recognizance entered into by the official liquidator and his sureties may be vacated.

(d) See sects. 111, 112, *ante*, p. 159.

66. When the official liquidator has passed his final account, and the balance (if any) certified to be due thereon has been paid in such manner as the judge shall direct, a certificate shall be made by the chief clerk, that the affairs of the company have been completely wound-up (*e*), and in case the company has not been already dissolved, the official liquidator shall, immediately after such certificate

has become binding, apply to the judge for an order that the company be dissolved from the date of such order (*f*).

(*e*) See form, No. 55, *post*.

(*f*) See form, No. 53, *post*.

67. When the proceedings for winding-up and company have been completed, the file of proceedings, and the book containing the official liquidator's account, shall be deposited in the Record and Writ Clerks' Office.

DUTIES OF SOLICITOR OF OFFICIAL LIQUIDATOR (*g*)

68. The solicitor of the official liquidator shall conduct all such proceedings as are ordinarily conducted by solicitors of the court; and where the attendance of his solicitor is required on any proceeding in court or chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the judge shall direct him to attend.

(*g*) See sect. 97, *ante*, p. 113; form, No. 12, *post*.

FORMS.

69. The forms set forth or referred to in the third schedule to these orders, with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in such schedule.

FEES.

70. Solicitors shall be entitled to charge, and be allowed the fees set forth and referred to in the first schedule hereto, unless the court or judge shall otherwise specially direct.

71. The fees of court set forth and referred to in the second schedule hereto shall be paid in relation to proceedings in the Court of Chancery under the Companies Act, 1862, and shall be collected by means of stamps, in the manner prescribed.

cribed by the 39th of the Consolidated General Orders (*h*).

(*h*) See Morgan's Chancery Acts and Orders, pp. 554—56.

TAXATION OF COSTS.

72. Where an order is made in court or chambers for payment of any costs, the order shall direct the taxation thereof by the taxing master; except in cases where a gross sum in lieu of taxed costs is ordered by the order, in accordance with the 37th rule of the 40th of the Consolidated General Orders (*i*).

(*i*) Upon interlocutory applications, where the court deems proper to award costs to either party, the court may by the order direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid. See *London and Blackwall Railway Company v. Board of Works for Limehouse District*, 26 L. J., Ch. 170.

POWER OF JUDGE (*k*).

73. The power of the court, and of the judge sitting in chambers, to enlarge or abridge the time for doing any act, or taking any proceeding, to adjourn or review any proceeding, and to give any direction as to the course of proceeding, is unaffected by these rules.

(*k*) See sects. 83, 119, 204, *ante*, pp. 105, 163, 236.

GENERAL DIRECTIONS (*l*).

74. The general practice of the court, including the course of proceeding and practice at the judges' chambers, as provided by the statute 15 & 16 Vict. c. 80, and the general orders of the court relative hereto, shall, in cases not provided for by the Companies Act, 1862, or these rules, and so far as the same are applicable and not inconsistent with the said act, or these rules, apply to all proceedings for winding-up a company (*m*).

(*l*) See sect. 170, *ante*, p. 209.

(*m*) See Morgan's Chancery Acts and Orders, pp. 136—136, 3rd ed.

APPLICATION OF RULES.

75. These rules apply only to proceedings under the Companies Act, 1862.

COMMENCEMENT OF RULES.

76. These rules shall take effect and come into operation on and after the 25th day of November 1862.

INTERPRETATION.

77. The 1st rule of the 23rd of the Consolidated General Orders, and the general interpretation clause therein, shall be deemed to extend and apply to the rules of this order; and such rules shall have the effect of, and be deemed to be general orders of the court (*n*).

(*n*) See *ante*, p. 294, n. (*c*).

WESTBURY, C.

JOHN ROMILLY, M. R.

RICHD. T. KINDERSLEY, V.-C.

JOHN STUART, V.-C.

W. P. WOOD, V.-C.

General rules and orders for the winding-up of mining companies in the court of the vice-warden of the stannaries have been made by such vice-warden with the consent of Lord Justice Turner; see *ante*, pp. 210, 211; to which schedules of forms and fees are annexed. These orders are applicable to the winding-up of all registered companies for working mines within and subject to the jurisdiction of the stannaries, and of all unregistered companies which may be wound up under the provisions of "The Companies Act, 1862."

These rules have been published by H. Sweet, 3, Chancery Lane, London. 1862. 12mo., price 1s. 6d.

THE FIRST SCHEDULE.

FEES AND CHARGES TO BE ALLOWED TO SOLICITORS.

	£	s.	d.
For preparing and drawing up every order made at chambers, and attending for same, and at the registrar's office to get same entered	0	13	4
For ingrossing every order, in addition to the above fee, per folio	0	0	4
For other duties performed, such of the fees on the higher scale authorized by the 2nd Rule of the 38th of the Consolidated General Orders, and the regulations as to solicitors' fees subjoined thereto, as are applicable; except that the special fee allowed on creditors' claims is not to apply.			
Where under such regulations a fee of 3 guineas may be allowed for attending any summons or other appointment at the judge's chambers, the same may be increased to any sum not exceeding 5 guineas.			
The fee of 2s. 6d. allowed by such regulations for notices and services shall be reduced to 1s. 6d., where the service may be effected as provided by the above Rule 63.			
The usual charges relating to printing shall be allowed in lieu of copies for service where the fee for copies would exceed the charges for printing, and amount to more than 3l.			

THE SECOND SCHEDULE.

FEES TO BE COLLECTED BY MEANS OF STAMPS.

In the Judges' Chambers.

For every summons	0	3	0
For every order drawn up by the chief clerk	0	5	0
For every advertisement	1	0	0
For every certificate	0	5	0
For every oath, affirmation, declaration or attestation upon honour	0	1	6

*Third Schedule to Rules.**In the Registrars' Office.*

	£	s.	d.
For every order made in court	1	0	0
For every order made in chambers	0	5	0
For every office copy of an order	0	5	0

In the Examiners' Office.

The same fees as those directed to be paid and collected in such office by the 2nd Rule of the 39th of the Consolidated General Orders and the Regulations subjoined thereto.

In the Record and Writ Clerks' Office and Report Office.

Such of the fees directed to be paid and collected in such office by the 2nd Rule of the 39th of the Consolidated General Orders and the Regulations subjoined thereto as are applicable.

In the Taxing Masters' Office.

The same fees as those directed to be paid and collected by the 2nd Rule of the 39th of the Consolidated General Orders and the Regulations subjoined thereto.

In the Office of the Lord Chancellor's Principal Secretary.

For every petition 1 0

In the Office of the Secretary at the Rolls.

For every petition 1 0

THE THIRD SCHEDULE.

FORMS.

No. 1. *Advertisement of Petition.* (Rule 2, ante, p. 296.)

In the matter of the Companies Act, 1862, and of the
 ——— company.

Notice is hereby given, that a petition for the winding-up of the above-named company by the Court [or subject to the supervision of the Court] of Chancery was, on the day of 186 presented to the Lord Chancellor [or the Master of the Rolls] by the said company [or by A. B. of a creditor, or contributory] the said company [or as the case may be]. And that the sa-

petition is directed to be heard before the Vice-Chancellor [or Master of the Rolls] on the day of 186 ; and any creditor or contributory of the said company desirous to oppose the making of an order for the winding-up of the said company under the above act should appear at the time of hearing by himself or his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same, by the undersigned, on payment of the regulated charge for the same.

C. and D. of &c. [agents for E. and F. of &c.]
solicitors for the petitioner.

No. 2.—*Affidavit verifying Petition.* (Rule 4, ante, p. 297.)
In Chancery.

In the Matter, &c.

I, A. B. of &c. make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A. as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons, I believe to be true.

Sworn, &c.

No. 3.—*Order for Winding-up by the Court.* (25 & 26 Vict.
c. 89, ss. 81, 82, *ante*, pp. 102—104.)

The Master of the Rolls } day, the day of ,
or Vice-Chancellor } 186 .
} In the Matter, &c.

Upon the petition of the above-named company [*or A. B. of &c.*
a creditor *or* contributory of the above-named company] on the
day of 186 , preferred unto the Right Honorable the
Lord High Chancellor of Great Britain [*or Master of the Rolls*],
and upon hearing counsel for the petitioner, and for , and
upon reading the said petition, an affidavit of (the said petitioner)
filed, &c. verifying the said petition, an affidavit of L. M. filed the
day of 186 , the London Gazette of the day of ,
the Times newspaper of the day of , [*enter any other*
papers] each containing an advertisement of the said petition [*enter*
any other evidence], his honor [*or this court*] doth order, that the
said company be wound-up by this court, under the provisions
of the Companies Act, 1862.

No. 4.—*Order for Winding-up, subject to Supervision.* (25 & 26 Vict. c. 89, ss. 147, 148, *ante*, p. 178.)

The Master of the Rolls } day, the day of
[or Vice-Chancellor } 186 .
] . In the Matter, &c.

Upon the petition, &c. his honor [or this court] doth order, that the voluntary winding-up of the said company be continued but subject to the supervision of this court; and any of the proceedings under the said voluntary winding-up may be adopted as the judge shall think fit. And the creditors, contributories and liquidators of the said company, and all other persons interested are to be at liberty to apply to the judge at chambers as there may be occasion.

No. 5.—*Advertisement of Order to Wind-up.* (Rule 6, *ante*, p. 297.)

In the Matter, &c.

By an order made by the Master of the Rolls [or the Vice-Chancellor] in the above matter, dated the day of 186 , on the petition of the above-named company [or A. B. C.], it was ordered that, &c. [*as in order*].

C. and D. of &c.

Solicitors for the said petitioner.

No. 6.—*Advertisement of Time and Place fixed for the Appointment of Official Liquidator.* (Rule 9, *ante*, p. 298.)

In the Matter, &c.

Notice is hereby given, that the Master of the Rolls [or the Vice-Chancellor] has fixed the day of 186 , at o'clock in the noon, at his chambers in the Rolls Yard, Chancery Lane [or at No. Lincoln's Inn], in the county of Middlesex, as the time and place for the appointment of an official liquidator of the above-named company.

G. H.

Chief Clerk.

No. 7.—*Proposal for Appointment of Official Liquidator (and Sureties) where Form No. 6 has been issued.*

In the Matter, &c.

We, the undersigned contributories of the above-named company

for the number of shares placed opposite our respective names, hereby propose Mr. W. T. of &c. public accountant, to be the official liquidator of the said company [and H. N. of &c. and J. P. of &c. to be his sureties].

Name.	Address.	Number of Shares held.

No. 8.—*Order appointing an Official Liquidator.* (Rules 10, 11, ante, p. 299.)

Master of the Rolls [*or* } , the day of ,
Vice-Chancellor } 186 .
] at chambers. } In the Matter, &c.

Upon the application, &c. and upon reading, &c. the judge doth hereby appoint R. P. H. of &c. official liquidator of the above-named company. [*If security has not been given add, and it is ordered that the said R. P. H. do, on or before the day of next, give security to be approved of by the judge.*] And it is ordered that the said R. P. H. do, on the day of , and day of 186 , and the same days in each succeeding year, leave his accounts at the chambers of the said judge. And it is ordered that all monies to be received by the said R. P. H. be paid by him into the Bank of England, to the credit of the account of the official liquidator of the said company, within seven days after the receipt thereof. [*In case two or more official liquidators are appointed add, and the said judge doth declare that the following acts, required or authorized by the above statute to be done by the official liquidator, may be done by either (or any one or two) of the official liquidators hereby appointed, that is to say (describe the acts); and that all other acts so required or authorized to be done be done by both (or all) the official liquidators hereby appointed.*]

No. 9.—*Order appointing a Provisional Official Liquidator.*
(Rules 10, 11, 15, 59, ante, pp. 299, 313.)

Master of the Rolls [or Vice-Chancellor] 186 . , the day of
] at Chambers. } In the Matter, &c.

Upon the application, &c. and upon reading, &c. the judge doth hereby appoint R. P. H. of &c. provisionally, official liquidator of the above-named company. [*If security dispensed with add without security ; or if security is to be given, add directions as to security, accounts and payment into the bank, as in Form No. 8.*] And the said judge doth hereby limit and restrict the powers of the said R. P. H. as such provisional official liquidator, to the following acts, that is to say, [*describe the acts which the provisional official liquidator is to be authorized to do.*]

No. 10.—*Recognizance of the Official Liquidator and Sureties.*
(Rule 10, ante, p. 299.)

In the matter, &c.
The Master of the Rolls [or Vice-Chancellor] has ap-
proved of and allowed this recognizance. G. H., Chief Clerk.

R. P. H. of &c. W. B. of &c. and T. P. of &c., before our sovereign lady the Queen in her High Court of Chancery personally appearing, do acknowledge themselves, and every of them doth acknowledge himself, to owe to the Right honorable Sir John Romilly, knight, the Master of the Rolls and the Honorable Sir Richard Torin Kindersley, knight, the senior Vice-Chancellor of the said court, the respective sums of lawful money of Great Britain set opposite to their respective names in the schedule hereto, to be paid to the said Sir John Romilly and Sir Richard Torin Kindersley, or one of them, or the executors or administrators of them, or one of them; and in default of payment of the said sums, the said R. P. H., W. B. and T. P. are willing and do agree, and every of them is willing and doth agree for himself, his heirs, executors and administrators, by these presents, that the said sums shall be levied, recovered and received of and from them, and every of them, and of and from all and singular the manors, messuages, lands, tenements and hereditaments, goods and chattels of them and every of them, wheresoever the same shall be found. Witness our sovereign lady Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, defender of the faith, and so forth, at Westminster, the day of , 186 .

Whereas in the matter of, &c. [*take title from order to wind-up*] the Master of the Rolls [*or Vice-Chancellor*] has by an order dated the day of , 186 , appointed the said R. P. H. official liquidator of the said company, and has thereby directed him to give security, to be approved of by the said judge [*or in case the security precedes the order appointing*], has approved of the said R. P. H. as a proper person to be appointed official liquidator of the said company, upon his giving security]. And whereas the said judge has approved of the said W. B. and T. P. to be sureties for the said R. P. H. in the amounts set opposite to their respective names in the schedule herein, and has also approved of the above-written recognizance, with the under-written condition, as a proper security to be entered into by the said R. P. H., W. B. and T. P. pursuant to the said order and [*or pursuant to*] the general order of the said court in that behalf; and in testimony of such approbation the chief clerk of the said judge hath signed an allowance in the margin hereof. Now the condition of the above written recognizance is such, that if the said R. P. H., his executors or administrators or any of them, do and shall duly account for what the said R. P. H. shall receive or become liable to pay as official liquidator of the said company at such periods and in such manner as the said judge shall appoint, and pay the same as the said judge hath [*by the said order*] directed, or shall hereafter direct, then the above recognizance to be void, otherwise to remain in full force and virtue.

THE SCHEDULE ABOVE REFERRED TO..

R. P. H.	. . .	————	. . .	Thousand pounds.
W. B.	. . .	————	. . .	Thousand pounds.
T. P.	. . .	————	. . .	Thousand pounds.

Taken and acknowledged by the above-named R. P. H., &c. &c.

No. 11.—*Affidavit of Sureties.* (Rule 10, *ante*, p. 299.)
In Chancery.

In the Matter, &c.

We, W. B. of &c. and T. P. of &c. severally make oath and say as follows:—

1. I the said W. B. for myself, say that I am worth the sum of £ of lawful money of Great Britain, over and above what is sufficient for the payment of all my just debts and liabilities.
2. And I, the said T. P. for myself, say that I am worth the sum of £ , of &c. [*as above*].

Sworn, &c.

No. 12.—*Sanction of Appointment of Solicitor to Official Liquidator, and Appointment.* (25 & 26 Vict. c. 89, s. 97, *ante*, p. 113.)

In the Matter, &c.

The Master of the Rolls [*or* Vice-Chancellor] sanctions the official liquidator appointing a solicitor to assist him in the performance of his duties.

G. H. Chief Clerk.

I hereby appoint Messrs. C. and D. of &c. to be my solicitors in this matter.

Dated this day of , 186

R. P. H. Official Liquidator.

No. 13.—*Order for Payment of Money or Delivery of Books &c. to Official Liquidator.* (25 & 26 Vict. c. 89, ss. 100, 101, *ante*, p. 152.)

The Master of the Rolls [*or* Vice-Chancellor] } 186 . day, the day of
at Chambers. } In the Matter, &c.

Upon the application of &c. and on reading, &c., it is ordered that A. B. of &c. do, within four days after service hereof, pay to [*or* deliver, convey, surrender or transfer to or into the hands of] R. P. H. the official liquidator of the said company, at the office of the said R. P. H. situate at &c. the sum of £ , being the amount of debt appearing to be due from the said A. B. on his account with the said company [*or* any sum or balance, books, papers, estates or effects], [*or specifically describe the property*] now being in the hands of the said A. B. and to which the said company is *prima facie* entitled [*or otherwise as the case may be*].

No. 14.—*Directions to open Account at the Bank of England* (Rules 11, 32, 36—44, *ante*, pp. 299, 304, 306—309.)

The Master of the Rolls [*or* Vice-Chancellor] } 186 . day of
at Chambers. } In the Matter, &c.

To the Governor and Company of the Bank of England.
Gentlemen,

An order, dated the day of 186 , having been made in the above matter by the Master of the Rolls [*or* the Vice-Chancellor] for winding-up the above-named company by the

Court of Chancery, under the provisions of the said act, and R. P. H. of , having by order dated the day of , 186 , been appointed the official liquidator of the said company, you are requested to open an account, to be entitled "The Account of the Official Liquidator of the Company," in your books, pursuant to the said act.

All cheques drawn upon such account must be signed by the official liquidator, whose signature is attached hereto, and countersigned by one of the chief clerks of the said judge, whose signatures are also attached hereto.

I am, Gentlemen,
Your most obedt. servt.,
G. H.
Chief Clerk.

Signatures.

R. P. H. Official Liquidator.

G. W. } Chief Clerks of the Master of
G. H. } the Rolls [or Vice-Chancellor
].

No. 15.—*Advertisement of Appointment of Official Liquidator.*
(Rule 14, ante, p. 300.)

In the Matter, &c.

The Master of the Rolls [or the Vice-Chancellor] has, by an order dated the day of , 186 , appointed R. P. H. of , to be official liquidator of the above-named company.

Dated this day of , 186 .

G. H.,
Chief Clerk.

No. 16.—*Advertisement for Creditors.* (Rule 20, ante, p. 301.)

In the Matter, &c.

The creditors of the above-named company are required, on or before the day of , 186 , to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors, if any, to R. P. H. of the official liquidator of the said company, and if so required by notice in writing from the said official liquidator, are by their solicitors to come in and prove their said debts or claims at the chambers of the Master of the Rolls [or the Vice-Chancellor], in the Rolls Yard, Chancery Lane [or at No. Lincoln's Inn], in the county

of Middlesex, at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved.

day, the day of , 186 , at o'clock in the noon, at the said chambers, is appointed for hearing and adjudicating upon the debts and claims.

Dated this day of , 186 .

G. H.
Chief Clerk.

No. 17.—*Affidavit of Official Liquidator as to Debts and Claims.*
(Rule 22, ante, p. 302.)

In Chancery.

In the Matter, &c.

I, R. P. H. of &c. the official liquidator of the above-named company, make oath and say as follows:—

1. I have, in the paper writing now produced and shown to me, and marked with the letter A., set forth a list of all the debts and claims the particulars of which have been sent in to me by persons making claims upon, or claiming to be creditors of the said company, pursuant to the advertisement issued in that behalf dated the day of , 186 ; and the names and addresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims, and examined the same with the books and documents of the said company, in order to ascertain, so far as I am able, which of such debts and claims are justly due from the said company; and I have in the first part of the said list, set forth such of the said debts and claims, or parts thereof, as in my opinion are justly due from the said company, and proper to be allowed without further evidence; and I have, in the sixth column of the said first part of the said list, set forth the amounts proper to be allowed in respect of such debts and claims; and I believe that such amounts respectively are justly due and proper to be allowed; and I have in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors.

Sworn, &c.

No. 18.—*Exhibit referred to in Affidavit No. 17. (Ante, p. 328.)*

(A.)

In the Matter, &c.

List of debts and claims of which the particulars have been sent in to the official liquidator.

This paper writing, marked (A.), was produced and shown to R. P. H., and is the same as is referred to in his affidavit.

Sworn before me this day of 18 .
W. B., &c.

First Part.—Debts and Claims proper to be allowed without further evidence.

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount claimed.	Amount proper to be allowed.	Reasons for belief that amounts are proper to be allowed.
				£ s. d.	£ s. d.	

Second Part.—Debts and Claims which ought to be proved by the Creditors.

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount claimed.
				£ s. d.

No. 19.—*Notice to Creditor of Allowance of Debt.* (Rule 23, ante, p. 302.)

In the Matter, &c.

[Place and date.]

Sir,—The debt claimed by you in this matter has been allowed by the judge at the sum of £ . [If part only allowed add, If you claim to have a larger sum allowed, you are hereby required to come in and prove the further amount claimed, &c., as in next Form.]

I am, &c.,

To Mr. P. R.

R. P. H., Official Liquidator.

No. 20.—*Notice to Creditors to come in and prove their Debts.* (Rule 24, ante, p. 302.)

In the Matter, &c.

You are hereby required to come in and prove the debt claimed by you against the above-named company, by filing your affidavit, and giving notice thereof to me, on or before the day of next; and you are to attend by your solicitor at the chambers of the Master of the Rolls, in the Rolls Yard, Chancery Lane [or of the Vice Chancellor , at No. , Lincoln's Inn], in the county of Middlesex, on the day of 186 , at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim.

Dated this day of 186 .

To Mr. S. T.

R. P. H., Official Liquidator.

No. 21.—*Affidavit of Creditor, in proof of Debt.* (Rule 24, ante, p. 302.)

In Chancery.

In the Matter, &c.

I, S. T., of &c., make oath, and say as follows:—

1. The above-named company was, on the day of 18 the date of the order for winding-up the same, and still is justly and truly indebted to me in the sum of £ for, &c. [describe shortly the nature of the debt, and exhibit any security for it; and in the case of a trade debt exhibit a bill of parcels, and verify the reasonableness of the charges, as in proving a debt in a suit.]

2. I have not, nor hath, nor have any person or persons by my order, or to my knowledge or belief, for my use received the said sum of £ or any part thereof, or any security or satisfaction for the same or any part thereof [*if any security add*] except the said [*describe the security*] hereinbefore mentioned or referred to.

Sworn, &c.

No. 22.—*Certificate of Chief Clerk as to Debts and Claims.*
(Rule 28, *ante*, p. 303.)

In the Matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or Vice-Chancellor*], I hereby certify that the result of the adjudication upon debts and claims against the above-named company, brought in pursuant to the advertisement issued in that behalf, dated the day of 186 , so far as such adjudication has up to the date of this certificate been proceeded with, is as follows:—

The debts and claims which have been allowed are set forth in the first schedule hereto, and, with the interest thereon and costs mentioned in the said schedule, are due to the persons therein named, and amount altogether to £ .

I have in the first part of the said schedule set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry down to the date of this certificate.

I have in the second part of the said schedule set forth such of the said debts and claims as do not carry interest, and the interest thereon has been computed at the rate of £4 per cent. per annum, from the day of 186 , being the date of the said order to wind-up the company, down to the date of this certificate.

The claims set forth in the second schedule hereto have been brought in by the persons therein named, and have been disallowed.

The evidence produced, &c.

FIRST SCHEDULE.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part.—Debts and Claims which carry Interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Total due.
1.	J. L.	29 Street, London, Stationer	On Bill of Exchange, dated &c.	£ s. d.
		Principal... ..	£	
		Interest at £ per cent. per annum (less Property Tax), from 186 to the date of this Certificate ...	£	
		Costs of Proof	£	
			Total, first Part	

Second Part.—Debts and Claims which do not carry Interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Interest on Principal (less Property Tax).	Total due.
40.	W. P.	15, Street, London, Coal Merchant.		£ s. d.	£ s. d.
		Principal... ..	Goods sold £50 0 0	2 0 0 } }	54 0 0
		Costs of Proof ...	2 0 0		
			Totals ...	£	
			Add Total	First Part... £	
			Total First and Second Parts ...		

No. 24.—*Affidavit in Support of List of Contributors.*
(Rule 29, ante, p. 303.)

In Chancery.

In the Matter, &c.

I, R. P. H. of &c. the official liquidator of the above-named company, make oath and say as follows:—

1. The paper writing now produced and shown to me, and marked with the letter (A.), contains a list of the contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses, and the number of shares [*or extent of interest*] to be attributed to each; and such list is, to the best of my knowledge, information and belief, a true and accurate list of the contributories of the said company, so far as I have been able to make out and ascertain the same.

2. I have in the first part of the said list marked (A.), distinguished the persons who are contributories in their own right.

3. I have in the second part of the said list marked (A.) distinguished the persons who are contributories as being representatives of or being liable to the debts of others.

Sworn, &c.

No. 25.—*List of Contributories referred to in Form No. 24.*
(A.)

In the Matter, &c.

This list of contributories marked (A.), was produced and shown to R. P. H., and is the same list of contributories as is referred to in his affidavit.

Sworn before me this day of 18 .

W. B., &c.

First Part.—Contributories in their own Right.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of interest].

Second Part.—Contributories as being Representatives of, or liable to the Debts of others.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of interest].

No. 26.—*Notice to Contributories of Appointment to settle List of Contributories.* (Rule 30, ante, p. 304.)

In the Matter, &c.

The Master of the Rolls [*or* Vice Chancellor], has appointed the day of 186 , at of the clock in the noon at his chambers, in the Rolls Yard, Chancery Lane [*or* at No. Lincoln's Inn], in the county of Middlesex, to settle the list of the contributories of the above-named company, made out and left at the chambers of the said judge by the official liquidator of the said company, and you are included in such list in the character, and for the number of shares [*or* extent of interest] stated below; and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled by the said judge, including you therein.

Dated this day of 18 .

R. H. P., Official Liquidator.

To Mr. A. B. [and to Mr. C. D.,
his solicitor.]

No. on List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].

No. 27.—*Affidavit of Service of Notice.* (Rule 30, *ante*, p. 304).

In Chancery.

In the Matter, &c.

I, W. S. of &c. clerk to Messrs. C. and D. of &c. the solicitors of the official liquidator of the above-named company, make oath, and say as follows:—

1. The first six columns of the schedule now produced and shown to me, marked with the letter A, contains a true copy of the list of contributories of the said company, made out and left at the chambers of the Master of the Rolls [*or* Vice-Chancellor], by the said official liquidator, on the day of 186 , and now on the file of proceedings of the said company, as I know from having, on the day of 186 , examined and compared the said schedule with the said list; and I have, in the seventh column of the said schedule marked A, set forth the names and addresses of the solicitors who have entered appearances for any of the contributories named in the said list.

2. I did, on the day of 186 , in the manner herein-after mentioned, serve a true copy of the notice now produced and shown to me, and marked B, upon each of the respective persons whose names, addresses and descriptions appear in the second, third and fourth columns of the said schedule marked A, except that in the tabular form at the foot of such copies respectively I inserted the number on the list, name, address, description, in what character included, and number of shares [*or* extent of interest] of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule marked A.

3. I served the said respective copies of the said notice, by putting such copies respectively, duly addressed to such persons respectively or their solicitors, according to their respective names and addresses appearing in the said schedule marked A, and with the proper postage stamps affixed thereto as prepaid letters, into the Post Office receiving-house, No. in Street, in the county of between the hours of and of the clock in the noon of the said day of Sworn, &c.

No. 28.—*The Schedule referred to in Form No. 27.*

(A).

In the Matter, &c.

This schedule marked (A) was produced and shown to W. S. and is the same schedule as is referred to in his affidavit, sworn before me, this day of 186 .

W. B. &c.

1.	2.	3.	4.	5.	6.	7.
No. on List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].	Names and Addresses of Solicitors who have entered appearances, and been served with a copy of the notice referred to in the Affidavit of W. S., to which this Schedule is an exhibit.

No. 29.—*Supplemental List of Contributories, and Affidavit in Support.* (Rule 29, ante, p. 302.)

n Chancery.

In the Matter, &c.

I, R. P. H. of &c. the official liquidator of the above-named company, make oath and say as follows:—

1. Since leaving at the chambers of the judge the list of the contributories in this matter, on the day of 186 , it has come to my knowledge that the several persons whose names are set forth in the supplemental list of contributories now produced and shown to me, and marked with the letter (B), are or have been holders of shares in [or members of] the said company, and to the best of my judgment, information and belief, such persons are contributories of the said company.

2. The said supplemental list marked (B) contains the names of such persons, together with their respective addresses, and the number of shares [or extent of interest] to be attributed to each; and such list is, to the best of my knowledge, information and belief, true and accurate.

3. I have, in the first part of the said list marked (B), distinguished each of the said persons as are contributories in their own right.

4. I have, in the second part of the said list marked (B), distinguished such of the said persons as are contributories as being representatives of, or being liable to the debts of others.

Sworn, &c.

No. 30.—*Supplemental List of Contributories referred to in Form No. 29. (Ante, p. 337.)*

(B).

In the Matter, &c.

This supplemental list of contributories marked (B) was produced and shown to R. P. H. and is the same supplemental list of contributories as is referred to in his affidavit, sworn before me this day of 186 .

W. B., &c.

Note.—*The supplemental list is to be made out in the same form as the original list, Form No. 25.*

No. 31.—*Certificate of Chief Clerk of Settlement of the List of Contributories. (Rule 31, ante, p. 304.)*

In the Matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [or Vice-Chancellor], I hereby certify that the result of the settlement of the list of contributories of the above-named company, made out and left at the chambers of the said judge by the official liquidator of the said company on the day of 186 , pursuant to the above statute and the general order of this court in that behalf, so far as the said list has been settled up to the date of this certificate, is as follows:—

1. The several persons whose names are set forth in the second column of the first schedule hereto have been included in the said list of contributories as contributories of the said company in respect of the number of shares [or extent of interest] set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories, as being representatives of, or being liable to the debt of others.

2. The several persons whose names are set forth in the second column of the second schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh column of the said first and second schedules, set forth opposite the name of each of the said several persons respectively, the date when such person was included or excluded from the said list of contributories.

The evidence produced, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part.—Contributories in their own right.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].	Date when included in the List.

Second Part.—Contributories as being representatives of, or liable to the debts of others.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest.]	Date when included in the List.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Serial No. in List.	Name.	Address.	Description.	In what Character proposed to be included.	Number of Shares [or extent of Interest].	Date when excluded from the List.

Dated this day of 186 .

G. H. Chief Clerk.

Approved the day of {
 186 . {
 Q 2

No. 32.—*Order on Application to vary List.* (Rule 29, ante, p. 304.)

Master of the Rolls [or day the day of
Vice-Chancellor] } 186 .
at Chambers. } In the Matter, &c.

Upon the application of W. N. to review the list of contributories of the said company, in respect of the inclusion of the said W. N. therein, and that his name may be excluded therefrom, and upon hearing counsel, &c., and upon reading, &c.: It is ordered that the name of the said W. N. be excluded from the said list of contributories [or the judge doth not think fit to make any order on the said application, except that the said W. N. do pay to R. P. H. the official liquidator of the said company, his costs of this application, to be taxed by the Taxing Master in case the parties differ].

No. 33.—*Affidavit of Official Liquidator in support of Proposal for Call.* (Rule 33, ante, p. 305.)

In Chancery.

In the Matter, &c.

I, R. P. H. of &c. the official liquidator of the above-named company, make oath and say as follows:—

1. I have, in the schedule now produced and shown to me, and marked with the letter (A), set forth a statement, showing the amount due in respect of the debts allowed against the said company, and the estimated amount of the costs, charges and expenses of and incidental to the winding-up the affairs thereof, and which several amounts form in the aggregate the sum of £ or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of £ and no more. There are no other assets belonging to the said company, except the amounts due from certain of the contributories of the said company, and, to the best of my information and belief, it will be impossible to realize in respect of the said amounts more than the sum of £ or thereabouts.

3. It appears by the chief clerk's certificate, dated the day of 186 , that persons have been settled on the list of contributories of the said company, in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said company, and of paying the costs, charges and expenses of and incidental to the winding-up the affairs thereof, I believe the sum of £ will be required, in addition to the amount of the assets of the said company mentioned in the said schedule (A) and the said sum of £ .

5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realizing the amount required as before mentioned, it is necessary at a call of £ per share should be made.

Sworn, &c.

No. 34.—*Summons for intended Call.* (Rule 33, *ante*, p. 305.)

in the Matter, &c.

Let all parties concerned attend at my chambers in the Rolls Yard, Chancery Lane [*or at No. Lincoln's Inn*], in the county of Middlesex, on day, the day of 186 , at the clock in the noon, on the hearing of an application on the part of the official liquidator of the above-named company, at a call to the amount of £ per share may be made on all the contributories [*or, if upon any particular class, specify the same*] of the said company.

John Romilly, Master of the Rolls,
or

X. Y., Vice-Chancellor.

This summons was taken out by A. & B. of in the county solicitors for the said official liquidator.

to Mr. A. B. of &c. a contributory of }
the said company proposed to be }
included in the said call.

No. 35.—*Advertisement of intended Call.* (Rule 33, *ante*, p. 305.)

in the Matter, &c.

By direction of the Master of the Rolls [*or Vice-Chancellor*] notice is hereby given, that the said judge has appointed the day of 186 , at o'clock in the afternoon, at his chambers in the Rolls Yard, &c. to make a call on all the contributories of the said company [*or as the case may be*], and that the official liquidator of the said company proposes that such call shall be for £ per share. All persons interested are entitled to attend at such day, hour and place, to offer objections to such call.

Dated this day of 186 .

G. H., Chief Clerk.

No. 36.—*General Order for a Call.* (Rule 34, *ante*, p. 305.)

Master of the Rolls [*or* the day of
Vice-Chancellor] 186 .
at Chambers. } In the Matter, &c.

Upon the application of the official liquidator of the above-named company, and upon reading two orders, dated the day, of 186 , and the day of 186 , the chief clerk's certificate, dated the day of 186 , an affidavit of the said official liquidator, filed 186 , and the exhibit marked (A) therein referred to, and an affidavit of filed 186 : It is ordered, that a call of pounds per share be made on all the contributories of the said company [*or as the case may be*]. And it is ordered, that each such contributory do on or before the day of 186 , pay into the Bank of England, to the account of the official liquidator of the company, the amount which will be due from him or her in respect of such call.

No. 37.—*Notice to be served with the General Order for a Call.*
(Rule 34, *ante*, p. 305.)

In the Matter, &c.

The amount due from you, A. B., in respect of the call made by the above [*or within*] order, is the sum of £ which sum is to be paid by you into the Bank of England, to the account mentioned in the said order. You can pay the same in person, or through a banker or other agent; but this notice and copy order must be produced at the bank upon such payment, and the cashier of the bank will, upon receiving the same, deliver to you a certificate of the payment in, numbered signed by the said cashier. In order to prevent proceedings being taken against you for non-payment, you must, immediately upon such payment in, cause written notice of the payment, and of the date thereof to be given to me as the official liquidator of the said company, at my office.

No. Street, in the county of Middlesex.

Dated this day of 186 .

R. P. H., Official Liquidator.

To Mr. A. B.

No. 38.—*Affidavit in support of Application for Order for Payment of Call due from Contributories.* (Rule 35, *ante*, p. 306.)

In Chancery.

In the Matter, &c.

I, R. P. H. of &c. the official liquidator of the above-named company, make oath and say as follows:—

No. 41.—*Certificate of Payment of Money into the Bank of England.* (Rule 39, *ante*, p. 307.)

In the Matter, &c.

No. .

day of 186 .

I hereby certify that C. D. of &c. has this day paid into the bank of England the sum of £ to be placed to the credit of the official liquidator of the company, pursuant to an order dated the day of 18 .

For the governor and company of the bank of England,

H. M. Cashier.

£ .

No. 42.—*Affidavit of Service of Order for Payment of Call.* (Rule 35, *ante*, p. 306.)

Chancery.

In the Matter, &c.

I, J. B. of &c. make oath and say as follows:—

1. I did, on the day of 186 personally serve G. F. of in the county of &c. with an order made in this matter by His Honor the Master of the Rolls [*or* Vice-Chancellor], dated the day of 186 whereby it was ordered [*set out the order in the past tense*] by delivering to and leaving with the said G. F. at in the county of a true copy of the said order, and at the same time producing and showing unto him the said G. F. the said original order duly entered.

2. There was indorsed on the said copy, when so served, the following words, that is to say, "If you the within-named G. F. neglect to obey this order by the time therein limited, you will be liable to be arrested under a writ of attachment issued out of the High Court of Chancery, or by the serjeant-at-arms attending the said court, and also be liable to have your estate sequestered for the purpose of compelling you to obey the same order."

Sworn, &c.

No. 43.—*Affidavit of Non-payment of Money by Order directed to be paid into the Bank of England.* (Rule 40, *ante*, p. 307.)

Chancery.

In the Matter, &c.

I, R. P. H. of &c. the official liquidator of the above-named company, make oath and say as follows:—

1. G. F. the person named in an order made in this matter by

No. 44.—*Request to invest Cash in Government Stock or Exchequer Bills.* (Rule 43, ante, p. 308.)

In the Matter, &c.

To the governor and company of the bank of England.

Gentlemen,

It appearing that the sum of £ cash is standing to the credit of the account of the official liquidator of the above-named company, you are hereby requested to invest the sum of £ part thereof, in the purchase of Bank £3 per Cent. Annuities [*or Reduced £3 per Cent. Annuities, or New £3 per Cent. Annuities, or New £2 : 10s. per Cent. Annuities*] in the name of R. P. H. of &c. the official liquidator of the said company [*or in the purchase of exchequer bills, and to deposit such exchequer bills in the bank of England, in the name and on behalf of the said official liquidator*]. The said annuities [*or exchequer bills*] are not to be sold, transferred or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator of the said company, and countersigned by the chief clerk of the Master of the Rolls [*or Vice-Chancellor*], or under an order to be made by the said judge.

Dated this day of 186 .

I am, gentlemen,

Your most obedient servant,

R. P. H. Official liquidator.

Countersigned,

G. H. Chief Clerk of the Master
of the Rolls [*or Vice-Chancellor*
].

No. 45.—*Notice (or Advertisement) of Meeting of Creditors or Contributories.* (Rules 45, 46, ante, p. 309.)

In the Matter, &c.

Notice is hereby given that the Master of the Rolls [*or Vice-Chancellor*] has directed a meeting of the creditors [*or contributories*] of the above-named company to be summoned pursuant to the above statute, for the purpose of ascertaining their wishes as to [*state the object for which meeting called, unless notice is by advertisement, in which case say,* certain matters relating to the winding-up of the said company], and that such meeting will be held on day, the day of 186 at o'clock in the noon, at in the county of at which time and place all the

creditors [*or contributories*] of the said company are requested to attend. [The said judge has appointed H. T. of &c. to act as chairman of such meeting.]

Dated this day 186 .

R. P. H. Official Liquidator.

No. 46.—*Appointment of Proxy to vote at Meeting of Creditors or Contributories.* (Rule 46, *ante*, p. 309.)

In the Matter, &c.

I, W. S. of in the county of being a creditor [*or contributory*] of the above-named company, hereby appoint of as my proxy to vote for me and on my behalf at the meeting of the creditors [*or contributories*] of the said company, summoned by direction of the Master of the Rolls [*or Vice-Chancellor*], to be held on the day of and at any adjournment thereof.

As witness my hand this day of 186 .

W. S.

Signed by the said W. S. }
in the presence of }
J. M. of &c.

No. 47.—*Memorandum of Appointment of a Person to act as Chairman at Meeting of Creditors or Contributories.* (Rule 47, *ante*, p. 310.)

In the Matter, &c.

The Master of the Rolls [*or Vice-Chancellor*] has appointed Mr. H. T. of &c. one of the creditors [*or contributories*] of the above-named company, to act as chairman of a meeting of the creditors [*or contributories*] of the said company summoned by direction of the said judge, pursuant to the above statute, to be held on day, the day of 186 at o'clock in the noon, at in the county of and to report the result of such meeting to the said judge.

The said meeting is summoned for the purpose as ascertaining the wishes of the creditors [*or contributories*] of the said company as to [*state the object for which meeting called*]; and at such meeting the votes of the creditors [*or contributories*] may be given either personally or by proxy.

Dated this day of 186 .

G. H. Chief Clerk.

No. 48.—*Chairman's Report of Result of Meeting of Creditors or Contributories.* (Rules 45, 46, 47, *ante*, pp. 309, 310.)

In the Matter, &c.

I, H. T. the person appointed by the Master of the Rolls [*or* Vice-Chancellor] to act as chairman of a meeting of the creditors [*or* contributories] of the above-named company, summoned by advertisement [*or* notice] dated the day of 186 and held on the day 186 at in the county of do hereby report to the said judge the result of such meeting as follows:—

The said meeting was attended, either personally or by proxy, by creditors to whom debts against the said company have been allowed, amounting in the whole to the value of £ [*or* by contributories holding in the whole shares in the said company, and entitled respectively, by the regulations of the company to the number of votes hereinafter mentioned].

The question submitted to the said meeting was, whether the creditors [*or* contributories] of the said company approved of the proposal of the official liquidator of the said company, that &c. [*as the case may be*], and wished that such proposal should be adopted and carried into effect.

The said meeting was unanimously of opinion that the said proposal should [*or* should not] be adopted and carried into effect. [*Or* The result of the voting upon such question was as follows:—]

The under-mentioned creditors [*or* contributories] voted in favor of the said proposal being adopted and carried into effect:—

Name of Creditor [<i>or</i> Contributory].	Address.	Value of Debt [<i>or</i> Number of Shares].	Number of Votes con- ferred on each Con- tributory by the Regu- lations of the Company.

The under-mentioned creditors [*or* contributories] voted against the said proposal being adopted and carried into effect:—

Name of Creditor [<i>or</i> Contributory].	Address.	Value of Debt [<i>or</i> Number of Shares.	Number of Votes con- ferred on each Con- tributory by the Regu- lations of the Company.

Dated this day of 186 .
(Signed) H. T. Chairman.

No. 49.—*Memorandum of Sanction of Judge to accepting Bill of Exchange.* (Rule 48, *ante*, p. 310.)

In the Matter, &c.

The Master of the Rolls [*or* Vice-Chancellor] has sanctioned the acceptance of this bill of exchange by the official liquidator, on behalf of the said company.

G. H. Chief Clerk.

No. 50.—*Memorandum of Agreement of Compromise with a Contributory.* (Rule 49, *ante*, p. 310.)

In the Matter, &c.

Memorandum of agreement entered into this day of 186 between R. P. H. of &c. the official liquidator of the above-named company of the one part and S. B. of &c., one of the contributories of the said company, of the other part.

Whereas the said S. B. has been settled on the list of contributories of the said company as a contributory in respect of shares of the said company: And whereas by an order made by the Master of the Rolls [*or* Vice-Chancellor], dated the day 186 , a call of £ per share was made on all the contributories of the said company, and there is now due from the

said S. B. to the said company the sum of £ in respect of the said call: And whereas the said S. B. has proposed to pay to the said official liquidator the sum of £ by way of compromise, and in satisfaction and discharge of the said sum of £ , and of all liability whatsoever, as a contributory of the said company: And whereas the official liquidator having investigated the affairs of the said S. B. and believing that such compromise will be beneficial to the said company, hath, in exercise of the power for that purpose given to him by the above statute, agreed to accept the same, subject to the sanction of the said judge and to the conditions and agreements hereinafter contained: Now it is hereby agreed by and between the said parties hereto:

1st. That the said official liquidator shall, before the day of next, apply to the said judge at chambers to sanction this agreement of compromise.

2nd. That upon this agreement being sanctioned by the said judge, the said S. B. shall, within days next after such sanction, pay to the said official liquidator the said sum of £ , and when thereto required, shall do and execute all such acts and deeds as may be necessary for transferring or surrendering and releasing to the said official liquidator on behalf of the said company, or in such manner as the said judge may direct, the said shares held by the said S. B. in the said company, and all claim and demand whatsoever which the said S. B. has or may have against the said company in respect of the said shares, or the distribution of the assets of the said company, or otherwise howsoever.

3rd. That the said sum of £ , and the transfer or surrender and release of the said shares and interest of the said S. B. as afore-said, shall be accepted by the said official liquidator as, and be deemed and taken to give to the said S. B. a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the said company or the official liquidator thereof now has or may hereafter have or be entitled to against the said S. B. in respect of his being or having been the holder of the said shares or otherwise, as a contributory of the said company.

4th. That in case this agreement shall not be sanctioned by the said judge it shall cease and determine, and the said official liquidator and the said S. B. shall be remitted to their original rights with respect to each other, as if this agreement had not been entered into.

5th. That in case this agreement shall be sanctioned by the said judge, and the said S. B. shall not in all respects perform the same on his part, the official liquidator shall be at liberty, with the sanction of the said judge, and without notice to the said S. B. to enforce the performance thereof, or with the like sanction to give notice to the said S. B. that he abandons this agreement,

whereupon the same shall cease and determine, and the said official liquidator shall be entitled to proceed against the said S. B. to enforce payment of the said sum of £ , or so much thereof as shall then remain due and unpaid, as if this agreement had not been entered into.

R. P. H. Official Liquidator.
S. B.

Witness to the signatures }
of the said R. P. H. and S. B. }
C. D. of &c. }

No. 51.—*Memorandum of Sanction of Judge to Agreement of Compromise.* (Rule 49, ante, p. 310.)

In the Matter, &c.

The Master of the Rolls [or Vice-Chancellor] has sanctioned this agreement of compromise.

G. H.
Chief Clerk.

No. 52.—*Order or Memorandum of the Sanction of the Judge for certain Acts to be done by the Official Liquidator.* (Rule 50, ante, p. 310.)

The Master of the Rolls [or Vice-Chancellor] } day of , 186 .
at Chambers. }

In the Matter, &c.

The Master of the Rolls [or Vice-Chancellor] doth hereby sanction [or has sanctioned] the following proceedings being taken [or acts being done] by the official liquidator of the above-named company, namely, [state the proceedings to be taken or acts to be done as,] the bringing [or instituting] and prosecuting an action at law [or suit in equity], in the name and on behalf of the said company, against [or defending an action at law or suit in equity] brought [or instituted] against the said company by K. M. of &c. to recover a debt or sum of £ alleged to be due from [or to] the said K. M. to [or from] the said company, &c.

G. H.
Chief Clerk.

No. 53.—*Appearance Book.* (Rule 62, *ante*, p. 314.)

In the Matter, &c.

Appearance Book.

Date when Appearance entered.	Party's Name.	Whether Creditor or Contributory.	If he appears in person, his Address for service.	If he appears by a Solicitor, his Solicitor's Name.	Solicitor's Address.	Amount of Debt [<i>or</i> Number of Shares.

No. 54.—*Summons for Persons to attend at Chambers to be examined.* (25 & 26 Vict. c. 89, s. 115, *ante*, p. 160.)

In Chancery.

In the Matter, &c.

A. B. of &c. and E. F. of &c. are hereby severally summoned to attend at the chambers of the Master of the Rolls [*or* Vice-Chancellor], in the Rolls Yard, Chancery Lane [*or* No. Lincoln's Inn], in the county of Middlesex, on day of 186 , at of the clock in the noon to be examined on the part of the official liquidator [*or* of W. D. of &c.], for the purpose of proceedings directed by the Master of the Rolls [*or* the said Vice-Chancellor] to be taken before me in the above matter. [And the said A. B. is hereby required to bring with him and produce, at the time and place aforesaid, a certain indenture (*describe documents*) and all other books, papers, deeds, writings and other documents in his custody or power in anywise relating to the above-named company.]

Dated this day of 186 .

G. H.,
Chief Clerk.

This summons was taken out by Messrs. C. & D. of in the county of , solicitors for the official liquidator [*or* for the said W. D.]

No. 55.—*Certificate of the Company being completely wound-up and of the Official Liquidator having passed his final Account.* (Rule 66, ante, p. 315.)

In the Matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or* Vice-Chancellor], I hereby certify that R. P. H. the official liquidator of the above-named company, has passed his final account as such official liquidator, and that the balance of £ thereby certified to be due to [*or* from] the said official liquidator has been paid in the manner directed by the order dated the day of 186 , and that the affairs of the said company have been completely wound-up.

The evidence produced, &c.

Dated this day of 186 .

G. H.,
Chief Clerk.

Approved the day of }
186 . }

No. 56.—*Order to Dissolve the Company.* (Rule 66, ante, p. 315.)

The Master of the Rolls [*or* Vice-Chancellor at Chambers.] } 186 . , the day of
In the Matter, &c.

Upon the application of the official liquidator of the above named company, and upon reading an order dated the day of and the chief clerk's certificate, dated the day of whereby it appears that the affairs of the said company have been completely wound-up, and that the balance of £ due from [*or* to] the official liquidator, has been paid in manner directed by the said order: It is ordered that the said company be dissolved as from this day of 186 , and that the recognizance dated the day of 186 , entered into by the said official liquidator, together with W. B. and T. P. his sureties, be vacated.

WESTBURY, C.
JOHN ROMILLY, M. R.
RICHD. T. KINDERSLEY, V. C.
JOHN STUART, V. C.
W. P. WOOD, V. C.

REGULATIONS

FOR THE

MANAGEMENT OF A COMPANY

IN

TABLE (B) OF THE ACT 19 & 20 VICT. c. 47.

THE stat. 19 & 20 Vict. c. 47, is repealed after 2nd November, 1862, but such repeal does not affect Table (B) annexed thereto, or any part thereof, so far as the same applies to any company existing on the 2nd November, 1862.

By 19 & 20 Vict. c. 47, s. 9, the memorandum of association may be accompanied by or have annexed thereto or indorsed thereon articles of association, signed by the subscribers to the memorandum of association, and prescribing regulations for the company : but if no such regulations are prescribed, or so far as the same do not extend to modify the regulations contained in the table marked (B) in the schedule to that act, such last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company, and shall bind the company and the shareholders therein to the same extent as if they had been inserted in articles of association, and such articles had been registered.

Special regulations may be prescribed by articles of association.

This table has in several cases been treated as a code of rules made obligatory by act of parliament on the company. It has been observed that the exact contrary is the fact, table (B) under the act 19 & 20 Vict. c. 47, and table (A) under the Companies Act, 1862, are simply model forms which a company shows an intention to adopt if

it fail to register articles of association. They have no parliamentary sanction whatever, and bind the company to the same extent only as articles of association (*a*).

TABLE (B).

REGULATIONS FOR MANAGEMENT OF THE COMPANY.

Shares.

- (1.) No person shall be deemed to have accepted any share in the company unless he has testified his acceptance thereof by writing under his hand, in such form as the company from time to time directs (*b*).
- (2.) The company may from time to time make such calls upon the shareholders in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days notice at least is given of each call, and each shareholder shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the company (*c*).
- (3.) A call shall be deemed to have been made at the time when the resolution authorizing such call was passed.

Acceptance
of shares.

(*a*) Thring's Law of Joint Stock Companies, vol. 2, p. 51, n.

(*b*) In an action for calls by a company registered under 19 & 20 Vict. c. 47, it was proved that the defendant had paid the deposit on the shares in advance to the bankers of the company, and had applied for the shares by a letter, which was in a printed form provided by the company, and signed by the defendant, in which he requested the directors to allot him twenty shares, and stated that he thereby agreed to accept the same. In compliance with that letter the number of shares applied for was allotted to the defendant, and the company never directed any other form of acceptance of shares: it was held, that as no other form had been directed by the company, the defendant had by the letter of application sufficiently testified his acceptance of the shares to satisfy this provision. *Bog Lead Mining Company v. Montague*, 30 L. J., C. P. 380; see *ante*, p. 127.

(*c*) See *ante*, p. 38, n. (*d*).

- (4.) If before or on the day appointed for payment any shareholder does not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.
- (5.) The company may, if they think fit, receive from any of the shareholders willing to advance the same all or any part of the monies due upon their respective shares beyond the sums actually called for ; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the shareholder paying such sum in advance and the company agree upon.
- (6.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.
- (7.) The company may decline to register any transfer of shares made by a shareholder who is indebted to them.
- (8.) Every shareholder shall, on payment of such sum, not exceeding one shilling, as the company may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.
- (9.) If such certificate is worn out or lost, it may be renewed, on payment of such sum, not exceeding one shilling, as the company may prescribe.
- (9a.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares (c).

- (10.) The executors or administrators of a deceased shareholder shall be the only person recognized by the company as having any title to his share.
- (11.) Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency

(c) See *ante*, pp. 41, 86—91, 133.

of any shareholder, or in consequence of the marriage of any female shareholder or in any way other than by transfer, may be registered as a shareholder upon such evidence being produced as may from time to time be required by the company.

- (12.) Any person who has become entitled to a share in any way other than by transfer may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share.
- (13.) The person so becoming entitled shall testify such election by executing to his nominee a deed of transfer of such share.
- (14.) The deed of transfer shall be presented to the company, accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the company shall register the transferee as a shareholder.

Forfeiture of Shares (d).

- (15.) If any shareholder fails to pay any call due on the appointed day, the company may at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with any interest that may have accrued by reason of such nonpayment.
- (16.) The notice shall name a further day, and a place or places, being a place or places at which calls of the company are usually made payable, on and at which such call is to be paid. It shall also state that in the event of nonpayment at the time and place appointed the shares in respect of which such call was made will be liable to be forfeited.
- (17.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.
- (18.) Any shares so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company thinks fit.
- (19.) Any shareholder whose shares have been forfeited shall notwithstanding be liable to pay to the com-

(d) See cases on this subject, *post*.

pany all calls owing upon such shares at the time of the forfeiture.

Increase in Capital (e).

- (20.) The company may, with the sanction of the company previously given in general meeting, increase its capital.
- (21.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls or the forfeiture of shares or nonpayment of calls or otherwise, as if it had been part of the original capital.

General Meeting (f).

- (22.) The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the company, and at such place as the directors may determine.
- (23.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.
- (24.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.
- (25.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the company, convene an extraordinary general meeting.
- (26.) Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.
- (27.) Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same

(e) See 19 & 20 Vict. c. 47, s. 37.

(f) See *ante*, p. 72; 19 & 20 Vict. c. 47, s. 32.

within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

- (28.) Seven days notice at the least, specifying the place, the time, the hour of meeting and purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner, if any, as may be prescribed by the company.
- (29.) Any shareholder may, on giving not less than three days previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.
- (30.) The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the company.
- (31.) No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business; and such quorum shall be ascertained as follows; that is to say, if the shareholders belonging to the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional shareholders up to fifty, and one for every ten additional shareholders after fifty, with this limitation, that no quorum shall in any case exceed forty.
- (32.) If within one hour from the time appointed for the meeting the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved: in any other case it shall stand adjourned to the following day, at the same time and place; and if at such adjourned meeting the required number of shareholders is not present, it shall be adjourned *sine die*.
- (33.) The chairman (if any) of the board of directors shall preside as chairman at every meeting of the company.
- (34.) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose some one of their number to be chairman of such meeting.
- (35.) The chairman may, with the consent of the meet-

ing, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

- (36.) At any general meeting, unless a poll is demanded by at least five shareholders, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favor of or against such resolution.
- (37.) If a poll is demanded in manner aforesaid the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

Votes of Shareholders (g).

- (38.) Every shareholder shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.
- (39.) If any shareholder is a lunatic or idiot he may vote by his committee, *curator bonis* or other legal curator; and if any shareholder is a minor he may vote by his guardian, tutor or curator, or any one of his guardians, tutors or curators, if more than one.
- (40.) If one or more persons are jointly entitled to a share or shares, the person whose name stands first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.
- (41.) No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an

intestate's estate, or by the custom of the city of London, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares.

- (42.) Votes may be given either personally or by proxies: a proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under their common seal (*i*).
- (43.) No person shall be appointed a proxy who is not a shareholder, and the instrument or mandate appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote; but no instrument or mandate appointing a proxy shall be valid after the expiration of one month from the date of its execution.

Directors (k).

- (44.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.
- (45.) Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this act be deemed to be directors.

Powers of Directors (l).

- (46.) The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by this act or by the articles of association, if any, declared to be exercisable by the company in general meeting, subject nevertheless to any regulations of the articles of association, to the provisions of this act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(*i*) See *ante*, pp. 54, 55.

(*k*) See *ante*, pp. 251, 268.

(*l*) See *post*, cases as to directors.

Disqualification of Directors (m).

- (47.) The office of director shall be vacated,—
If he holds any other office or place of profit under the company ;
If he becomes bankrupt or insolvent ;
If he is concerned in or participates in the profits of any contract with the company ;
If he participates in the profits of any work done for the company :
But the above rules shall be subject to the following exceptions : that no director shall vacate his office by reason of his being a shareholder in any incorporated company which has entered into contracts with or done any work for the company of which he is director ; nevertheless he shall not vote in respect of such contract or work ; and if he does so vote his vote shall not be counted, and he shall incur a penalty not exceeding twenty pounds.

Rotation of Directors.

- (48.) At the first ordinary meeting after the incorporation of the company the whole of the directors shall retire from office ; and at the first ordinary meeting in every subsequent year one third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one third shall retire from office.
- (49.) The one third or other nearest number to retire during the first and second years ensuing the incorporation of the company shall, unless the directors agree among themselves, be determined by ballot : in every subsequent year the one third or other nearest number who have been longest in office shall retire.
- (50.) A retiring director shall be re-eligible.
- (51.) The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.
- (52.) If at any meeting at which an election of directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at

the same time and place ; and if at such adjourned meeting no election takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year.

- (53.) The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.
- (54.) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained same if no vacancy had occurred.

Proceedings of Directors (n).

- (55.) The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business : questions arising at any meeting shall be decided by a majority of votes : in case of an equality of votes the chairman, in addition to his original vote, shall have a casting vote : a director may at any time summon a meeting of the directors.
- (56.) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office ; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.
- (57.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit : any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.
- (58.) A committee may elect a chairman of their meetings : if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

- (59.) A committee may meet and adjourn as they think proper: questions at any meeting shall be determined by a majority of votes of the members present; and in case of an equal division of votes the chairman shall have a casting vote.
- (60.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.
- (61.) The directors shall cause minutes to be made in books provided for the purpose,—
- (1.) Of all appointments of officers made by the directors;
 - (2.) Of the names of the directors present at each meeting of directors and committees of directors;
 - (3.) Of all orders made by the directors and committees of directors; and,
 - (4.) Of all resolutions and proceedings of meetings of the company and of the directors and committees of directors,
- and any such minute as aforesaid, if signed by any person purporting to be the chairman of any meeting of directors, or committee of directors, shall be receivable in evidence without any further proof.
- (62.) The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Dividends (o).

- (63.) The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

- (64.) No dividend shall be payable except out of the profits arising from the business of the company.
- (65.) The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the company, may select.
- (66.) The directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the company on account of calls or otherwise.
- (67.) Notice of any dividend that may have been declared shall be given to each shareholder, or sent by post or otherwise to his registered place of abode, and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the company.
- (68.) No dividends shall bear interest as against the company.

Accounts.

- (69.) The directors shall cause true accounts to be kept,—
 - Of the stock in trade of the company;
 - Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and,
 - Of the credits and liabilities of the company :Such accounts shall be kept, upon the principle of double entry, in a cash book, journal and ledger: the books of account shall be kept at the principal office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the shareholders during the hours of business.
- (70.) Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.
- (71.) The statement so made shall show, arranged under:

the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries and other like matters: every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

- (72.) A balance-sheet shall be made out in every year, and laid before the general meeting of the company, and such balance-sheet shall contain a summary of the property and liabilities of the company, arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit (a).
- (73.) A printed copy of such balance sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder.

Audit.

- (74.) The accounts of the company shall be examined and the correctness of the balance sheet ascertained by one or more auditor or auditors to be elected by the company in general meeting.
- (75.) If not more than one auditor is appointed all the provisions herein contained relating to auditors shall apply to him.
- (76.) The auditors need not be shareholders in the company: no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.
- (77.) The election of auditors shall be made by the company at their ordinary meeting, or, if there are more than one, at their first ordinary meeting in each year.

(a) See *post*, p. 370.

- (78.) The remuneration of the auditors shall be fixed by the company at the time of their election.
- (79.) Any auditor shall be re-eligible on his quitting office.
- (80.) If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.
- (81.) If no election of auditors is made in manner aforesaid the board of trade may, on the application of one-fifth in number of the shareholders of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.
- (82.) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.
- (83.) Every auditor shall have a list delivered to him of all books kept by the company, and he shall at all reasonable times have access to the books and accounts of the company: he may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.
- (84.) The auditors shall make a report to the shareholders upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

*
Notices.

- (85.) Notices requiring to be served by the company upon the shareholders may be served either per-

sonally or by leaving the same or sending them through the post in a letter addressed to the shareholders at their registered places of abode.

(86.) All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

(87.) All notices required by this act to be given by advertisement shall be advertised in a newspaper circulating in the district in which the registered office of the company is situate.

Form of Balance Sheet referred to in Table (B), ante, p. 367.

Dr. BALANCE SHEET of the Company made up to 18 . Cr.

CAPITAL AND LIABILITIES.		PROPERTY AND ASSETS.	
I. CAPITAL.	£ s. d. £ s. d.	III. PROPERTY held by the Company.	£ s. d. £ s. d.
1. Showing: The Total Amount received from the Shareholders: showing also: (a.) The Number of Shares (b.) The Amount paid per Share (c.) If any Arrears of Calls, the Nature of the Arrear, and the Names of the Defaulters. Any Arrears due from any Director or officer of the Company to be separately stated. (d.) The Particulars of any forfeited Shares.		4. Showing: Immoveable Property, distinguishing— (a.) Freehold Land (b.) Buildings (c.) Leasehold (d.) Stock in Trade (e.) Plant The Cost to be stated with Deductions for Deterioration in Value as charged to the Reserve Fund or Profit and Loss.	
II. DEBTS AND LIABILITIES of the Company.		IV. DEBTS owing to the Company.	
2. Showing: The Amount of Loans on Mortgages or Debenture Bonds.		6. Debts considered good for which the Company hold Bills or other Securities.	
3. The Amount of Debts owing by the Company, distinguishing— (a.) Debts for which Acceptances have been given. (b.) Debts to Tradesmen for Supplies of Stock in Trade or other Articles. (c.) Debts for Law Expenses. (d.) Debts for Interest on Debentures or other Loans. (e.) Unclaimed Dividends. (f.) Debts not enumerated above.		7. Debts considered good for which the Company hold no Security. 8. Debts considered doubtful and bad. Any Debt due from a Director or other Officer of the Company to be separately stated.	
VI. RESERVE FUND.		V. CASH AND INVESTMENTS.	
Showing: The Amount set aside from Profits to meet Contingencies.		9. Showing: The Nature of Investment and Rate of Interest.	
VII. PROFIT AND LOSS.		10. The Amount of Cash, where lodged, and if bearing Interest.	

RAILWAY COMPANIES ARBITRATION ACT, 1859.

22 & 23 VICT. c. 56.

An Act to enable Railway Companies to settle their Differences with other Companies by Arbitration. [13th August, 1859 (a).]

FOR the better providing for the settlement by arbitration of matters in which railway companies in the United Kingdom are mutually interested, be it enacted as follows, (that is to say,)

1. This act may for all purposes be cited as *Short title.*
“Railway Companies Arbitration Act, 1859;” and the expression “railway companies” in this act extends to and includes all persons being the owners or lessees of, and all contractors working any railway upon which steam power is used. *“Railway companies.”*

2. Any two or more railway companies, whether already or hereafter incorporated (in this act called “the companies”), from time to time, by writing under their respective common seals, may agree to refer and may refer to arbitration, in accordance with this act, any then existing or future differences, questions or other matters whatsoever in which they then are or thereafter shall be mutually interested, and which they might lawfully settle or dispose of by agreement between themselves, and may delegate to the person or persons to whom the reference is made any power to determine all or any of the terms of any contract to be made between the com- *Power for railway companies to refer matters to arbitration.*

(a) All the provisions of this act apply to arbitrations between companies and persons, in pursuance of “The Companies Act, 1862,” and in the construction of such provisions “the companies” shall be deemed to include companies authorized by that act to refer disputes to arbitration. See sects. 72, 73 of that act, *ante*, p. 75.

panies which the directors of the companies respectively might lawfully delegate to any committees of themselves respectively.

Power to alter or revoke agreements for reference.

3. The companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter or revoke any agreement for reference in accordance with this act theretofore entered into between the companies, or any of the terms, conditions or stipulations thereof.

Agreements to be carried into effect.

4. Every reference or agreement in accordance with this act, except so far as it is from time to time revoked or modified in accordance with this act, shall bind the companies, and may and shall be carried into full effect.

Reference to a single arbitrator.

5. Where the companies agree, the reference shall be made to a single arbitrator.

Reference to two or more arbitrators.

6. Except where the companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, to wit,

Where there are two companies the reference shall be made to two arbitrators;

Where there are three or more companies the reference shall be made to so many arbitrators as there are companies.

Appointment of arbitrators by companies.

7. Where there are to be two or more arbitrators, every company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other company or companies.

Appointment of arbitrators by board of trade.

8. Where there are to be two or more arbitrators, if any of the companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the board of trade, instead of the company so failing to appoint an arbitrator, may appoint an arbitrator; and the arbitrator so appointed shall for the purposes of this act be deemed to be appointed by the company so failing.

Appointment of arbitrators

9. When the reference is made to two or more arbitrators, if before the matters referred to them are

determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

by companies to supply vacancies.

10. Where the company by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit or failing to act, fail to make the appointment within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the board of trade may appoint an arbitrator; and the arbitrator so appointed by the board of trade shall for the purposes of this act be deemed to be appointed by the company so failing.

Appointment of arbitrators by board of trade to supply vacancies.

11. When any appointment of an arbitrator is made, the company making the appointment shall have no power to revoke the appointment, without the previous consent in writing of the other company, or every other company in writing under their common seal.

Appointment of arbitrator not revocable.

12. Where two or more arbitrators are appointed, they shall, before entering on the business of reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

Appointment of umpire by arbitrators.

13. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the companies or any of them, the board of trade may appoint an umpire; and the umpire so appointed shall for the purposes of this act be deemed to be appointed by the arbitrators.

Appointment of umpire by board of trade.

14. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

Appointment of umpire by arbitrators to supply vacancy.

15. If the arbitrators fail to appoint an umpire

Appointment of

umpire by
board of
trade to
supply
vacancy.

within seven days after notice in writing to them of the decease, incapacity, unfitness or failure to act of their umpire, then, on the application of the companies or any of them, the board of trade may appoint an umpire; and the umpire so appointed shall for the purposes of this act be deemed to be appointed by the arbitrators so failing.

Succeeding
arbitrators
and umpires
to have
powers of
prede-
cessors.

16. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Reference to
umpire.

17. Where there are two or more arbitrators, if they do not, within such a time as the companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

Power for
arbitrators,
&c. to call
for books,
&c., and
administer
oath.

18. The arbitrator, and the arbitrators, and the umpire respectively may call for the production of any documents or evidence in the possession or power of the companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators, or the umpire may think necessary for determining the matters referred, and may examine the witnesses of the companies respectively on oath, and may administer the requisite oath; and in Scotland may grant diligence for the recovery of the documents or evidence, and for citing witnesses, and on application to the lord ordinary he may issue letters of supplement or other necessary writs in support of the diligence.

Procedure
in the arbi-
tration.

19. Except where and as the companies otherwise agree, the arbitrator, and the arbitrators, and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Arbitration
may proceed
in absence of
companies.

20. The arbitrator, and the arbitrators, and the umpire respectively may proceed in the absence of all or any of the companies in every case in which,

after giving notice in that behalf to the companies respectively, the arbitrator, or the arbitrators or the umpire shall think fit so to proceed.

21. The arbitrator, and the arbitrators, and the umpire respectively may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred; and every such award on part of the matters shall for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

Several awards may be made.

22. The award of the arbitrator, or of the arbitrators, or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the companies within such a time as the companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator, or the arbitrators, or the umpire, shall be binding and conclusive on all the companies (*b*).

Awards made in due time to bind all parties.

(*b*) By 23 & 24 Vict. c. 3, s. 1, in schedule thereto, the following stamp duties are imposed upon an award in England and Ireland and award or decret arbitral in Scotland, viz. :—

Stamps payable on awards.

Where the amount or value of the matters in dispute shall not exceed 50 <i>l.</i>	£	s.	d.
And where it shall exceed 50 <i>l.</i> , and not exceed 100 <i>l.</i>	0	2	6
And where it shall exceed 100 <i>l.</i> , and not exceed 200 <i>l.</i>	0	5	0
And where it shall exceed 200 <i>l.</i> , and not exceed 500 <i>l.</i>	0	10	0
And where it shall exceed 500 <i>l.</i> , and not exceed 750 <i>l.</i>	0	15	0
And where it shall exceed 750 <i>l.</i> , and not exceed 1,000 <i>l.</i>	1	0	0
And where it shall exceed 1,000 <i>l.</i> , and also all other cases not above provided for.....	1	5	0
	1	15	0

Power for
umpire to
extend
period for
making his
award.

23. Provided always, that (except where and as the companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made; and if it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

Awards not
to be set
aside for in-
formality.

24. No award made on any arbitration in accordance with this act shall be set aside for any irregularity or informality.

Awards to
be obeyed.

25. Except only so far as the companies bound by any award in accordance with this act from time to time otherwise agree, all things by every award in accordance with this act lawfully required to be done, omitted or suffered shall be done, omitted or suffered accordingly.

Agreements,
arbitrations
and awards
to have
effect.

26. Full effect shall be given by all the superior courts of law and equity in the United Kingdom, according to their respective jurisdiction, and by the companies respectively, and otherwise, to all agreements, references, arbitrations and awards in accordance with this acts; and the performance or observance thereof may, where the courts think fit, be compelled by distress infinite (*e*) on the property of the companies respectively, or by any other process against the companies respectively or their respective property that the courts or any judge thereof shall direct, and where requisite frame for the purpose.

(*c*) The proper mode of proceeding against a corporation to enforce the remedy by indictment is by distress infinite, to compel appearance after removal by *certiorari*. See *Reg. v. Birmingham and Gloucester Railway Company*, 3 Q. B. 233; 9 Car. & P. 469; Shelford on the Law of Railways, pp. 579, 580, 3rd ed.

Costs of
arbitration
and award.

27. Except where and as the companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators and the umpire respectively.

Payment of
costs.

28. Except where and as the companies otherwise agree, and if and so far as the award does not

otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the companies in equal shares, and in other respects the companies shall bear their own respective costs.

29. The submission to any arbitration in accordance with this act may at any time be made a rule of any of her Majesty's superior courts of record at Westminster, or, as the case may be, at Dublin, on the application of any party interested; and the court may remit the matter to the arbitrator, or to the arbitrators, or to the umpire, with any directions the court think fit.

Submission
to arbitra-
tion to be
made a rule
of court.

CRIMINAL OFFENCES BY DIRECTORS, &c. OF PUBLIC COMPANIES.

THE statute 24 & 25 Vict. c. 96, to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences, contains the following provisions applicable to the subject of this work.

Directors of any body corporate or public company fraudulently appropriating property (*a*).

81. Whosoever, being a director, member or public officer of any body corporate or public company, shall fraudulently take or apply for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of the property (*b*) of such body corporate or public company, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned (*c*).

(*a*) See 20 & 21 Vict. c. 54, s. 5.

Property.

(*b*) The term "property" shall include every description of real and personal property, money, debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and shall also include not only such property as shall have been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Punishment.

(*c*) The reference here is to the 75th section, whereby several other offences are made misdemeanors, which render the offenders liable, "at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

82. Whosoever, being a director, public officer or manager of any body corporate or public company, shall as such receive or possess himself of any of the property of such body corporate or public company otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned.

Or keeping fraudulent accounts (a).

(a) See 20 & 21 Vict. c. 54, s. 6.

83. Whosoever, being a director, manager, public officer or member of any body corporate or public company, shall, with intent to defraud, destroy, alter, mutilate or falsify any book, paper, writing or valuable security belonging to the body corporate or public company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular, in any book of account or other document, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award, as hereinbefore last mentioned.

Or wilfully destroying books, &c. (b)

(b) See 20 & 21 Vict. c. 54, s. 7.

84. Whosoever, being a director, manager or public officer of any body corporate or public company, shall make, circulate or publish, or concur in making, circulating or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter

Or publishing fraudulent statements (c).

into any security for the benefit thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award, as hereinbefore last mentioned.

(c) See 20 & 21 Vict. c. 54, s. 8.

No person to be exempt from answering questions in any court, but no person making a disclosure in any compulsory proceeding to be liable to prosecution.

85. Nothing in any of the last ten preceding sections of this act contained shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any court, or upon the hearing of any matter in bankruptcy or insolvency; and no person shall be liable to be convicted of any of the misdemeanors in any of the said sections mentioned by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first disclosed such act on oath, in consequence of any compulsory process of any court of law or equity, in any action, suit or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any court upon the hearing of any matter in bankruptcy or insolvency.

No remedy at law or in equity shall be affected.

86. Nothing in any of the last eleven preceding sections of this act contained, nor any proceeding, conviction or judgment to be had or taken thereon against any person under any of the said sections, shall prevent, lessen or impeach any remedy at law or in equity which any party aggrieved by any offence against any of the said sections might have had if this act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and nothing in the said sections contained shall affect or prejudice any agreement entered into or security given by any trustee, having for its object the restoration or repayment of any trust property misappropriated.

Convictions shall not be received in evidence in civil suits.

87. No misdemeanor against any of the last twelve preceding sections of this act shall be prosecuted or tried at any court of general or quarter sessions of the peace. Certain misdemeanors not triable at sessions.

90. Whosoever, with intent to defraud or injure any other person, shall by any false pretence fraudulently cause or induce any other person to execute, make, accept, indorse or destroy the whole or any part of any valuable security, or to write, impress or affix his name, or the name of any other person, or of any company, firm or copartnership, or the seal of any body corporate, company or society, upon any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement (a). Inducing persons by fraud to execute deeds and other instruments.

(a) See *Reg. v. Danger*, 1 D. & B. C. C. 307.

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1862.

25 & 26 VICT. c. 87.

An Act to consolidate and amend the Laws relating to Industrial and Provident Societies (a).
[7th August, 1862.]

15 & 16 Vict.
c. 31.

WHEREAS by the Industrial and Povident Societies Act, 1852, it is enacted, that it shall be lawful for any number of persons to establish a society under the provisions thereof and of the therein recited act, for the purpose of raising by voluntary subscriptions of the members thereof a fund for attaining any purpose or object for the time being authorized by the laws in force with respect to friendly societies or by the said recited act, by carrying on or exercising in common any labour, trade or handicraft, or several labours, trades or handicrafts, except the working of mines, minerals or quarries beyond the limits of the United Kingdom of Great Britain and Ireland, and also except the business of banking, whether in the said United Kingdom or elsewhere; and that the said act shall apply to all societies already established for any of the purposes herein mentioned, so soon as they shall conform to the provisions hereof: and whereas by an act passed in

17 & 18 Vict.
c. 25.

(a) Any company carrying on business other than that of mining may register under this act, see sect. 3, instead of registering under the Companies Act, 1862. It is said that the advantages which this act presents over the Companies Act, 1862, consist in the exemptions contained in the 15th section, and the power of winding-up given by the 17th section in the Cōunty Court instead of the Court of Chancery. This act, however, is applicable only to small schemes, as no member can hold or claim any interest in the company exceeding the sum of 200*l.* *Post*, sect. 9; see Thring's Law and Pr. of Joint Stock Companies, vol. 2, p. 189.

the seventeenth and eighteenth years of her present Majesty, chapter twenty-five, various provisions were made for the better enabling legal proceedings to be carried on in any matter concerning the societies formed under the said Act of 1852: and whereas the last-mentioned act was amended by an act passed in the first session of the nineteenth and twentieth years of her present Majesty, chapter forty: and whereas various societies have been formed and are now carrying on business under the provisions of the said recited acts, and it is desirable to consolidate and amend the laws relating to such societies; be it therefore enacted by, &c., as follows:

1. The Industrial and Provident Societies Act, 1852, and the said recited acts for the amendment thereof, are hereby repealed from the passing of this act.

2. All societies registered under the Industrial and Provident Societies Act, 1852, shall be entitled to obtain a certificate of registration on application to the registrar of friendly societies, and for which certificate no fee shall be payable to the registrar.

3. Any number of persons, not being less than seven, may establish a society under this act for the purpose of carrying on any labour, trade or handicraft, whether wholesale or retail, except the working of mines and quarries, and except the business of banking, and of applying the profits for any purposes allowed by the Friendly Societies Acts (*b*), or otherwise permitted by law.

(*a*) See 25 & 26 Vict. c. 89, s. 6, *ante*, p. 5.

(*b*) The acts here referred to are 18 & 19 Vict. c. 63, 21 & 22 Vict. c. 101, and 23 & 24 Vict. c. 58.

The laws relating to friendly societies were consolidated by 13 & 14 Vict. c. 115, which was continued and amended by 15 & 16 Vict. c. 65, and 17 & 18 Vict. c. 101, and amended by 16 & 17 Vict. c. 123 and 17 & 18 Vict. c. 56.

See stat. 15 & 16 Vict. c. 31, to legalize the formation of industrial and provident societies, to which the provisions of the laws relating to friendly societies are in general made applicable. 15 & 16 Vict. c. 31, s. 8.

By 18 & 19 Vict. c. 63, s. 1, to consolidate and amend the law relating to friendly societies, the above acts (*inter alia*)

19 & 20 Vict.
c. 40.

Recited acts
repealed.

As to so-
cieties regis-
tered under
recited acts.

Constitution
of societies
under this
act (*a*).

are repealed, and that act is amended by 21 & 22 Vict. c. 101.

By sect. 48 of the act 18 & 19 Vict. c. 63, all the provisions of that act apply to all societies constituted under the Industrial and Provident Societies Act, 1852, in the same manner as the laws in force relating to friendly societies at the date of the latter act are thereby directed to apply to societies constituted thereunder.

The stat. 23 & 24 Vict. c. 58, amends the 18 & 19 Vict. c. 63, in regard to the mode of dissolving those societies when in an insolvent condition and establishing the proof thereof, and also the mode of enforcing penalties against the registrar for not making the annual returns required by sect. 6 of 9 & 10 Vict. c. 27. See also "The Friendly Societies Discharge Act, 1854," 17 & 18 Vict. c. 56.

Rules.

4. The rules of every such society shall contain provisions in respect of the several matters mentioned in the schedule annexed to this act.

Registration
of society.

5. Two copies of the rules shall be forwarded to the registrar of friendly societies of England, Scotland or Ireland, according to the place where the office of the society is situate, and shall be dealt with by him in the manner provided by the Friendly Societies Act, 1855(*d*); and he shall thereupon give his certificate of registration, and such certificate shall in all cases be conclusive evidence that the society has been duly registered, and thereupon the members of such society shall become a body corporate, by the name therein described, having a perpetual succession and a common seal, with power to hold lands and buildings, with limited liability.

(*d*) 18 & 19 Vict. c. 63.

Certificate
of registra-
tion to vest
all property
in society
now held in
trust for
society.

6. The certificate of registration shall vest in the society all the property that may at the time be vested in any person in trust for the society; and all legal proceedings then pending by or against any such trustee or other officer on account of the society may be prosecuted by or against the society in its registered name without abatement.

Copy of
rules to be
delivered to
persons on
demand.

7. A copy of the rules shall be delivered by the society to every person, on demand, on payment of a sum not exceeding one shilling.

No society to be registered by same name as that of any existing society.

(e) See 25 & 26 Vict. c. 89, s. 20, *ante*, p. 29.

Members' interests limited to 200¢.

Publication
of name by
a society (f).

(f) See 25 & 26 Vict. c. 89, s. 41, *ante*, p. 48.

Penalties on
non-publi-
cation of
name, &c. (g)

sory note, indorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the society, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the society.

(g) See 25 & 26 Vict. c. 89, s. 42, *ante*, p. 48.

Every society to have a registered office.

12. Every society under this act shall have registered office to which all communications and notices may be addressed: if any society registered under this act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business so carried on.

Penalty on default.

Notice of situation of registered office.

13. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him: until such notice is given the society shall not be deemed to have complied with the provisions of this act.

Signature and effect of rules.

14. The rules of every society registered under this act shall bind the society, and the members thereof, to the same extent as if each member had subscribed his name and affixed his seal thereto: and there were in such rules contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to such rules subject to the provisions of this act; and all monies payable to any member to the society in pursuance of such rules shall be deemed to be a debt due from such member to the society.

Application of Friendly Societies Acts to this act.

15. The provisions of the Friendly Societies Act shall apply to societies registered under this act the following particulars:

Exemption from stamp duties and income tax
Settlements of disputes by arbitration or judgments;

Compensation to members unjustly excluded ;
Power of justices or county courts in case of
fraud ;

Jurisdiction of the registrar.

16. The provisions of the Friendly Societies Act, 1854, whereby a member of any society registered thereunder is allowed to nominate any persons to whom his investment in such society shall be paid, shall extend, in the case of societies registered under this act, to allow any member thereof to nominate any persons into whose name his interest in such society at his decease shall be transferred : provided nevertheless, that any such society may, in lieu of making such transfer, elect to pay to any persons so nominated the full value of such interest.

Power to member to nominate persons into whose name his interest may be transferred at his death.

17. Any society registered under this act may be wound-up either by the court or voluntarily, in the same manner and under the same circumstances under and in which any company may be wound-up under any acts or act for the time being in force for winding-up companies ; and all the provisions of such acts or act with respect to winding-up shall apply to such society, with this exception, that the court having jurisdiction in the winding-up shall be the county court of the district in which the office of the society is situated.

As to the winding-up of societies (*h*).

(*h*) See 25 & 26 Vict. c. 89, s. 74, *ante*, p. 76. As to proceedings in the County Court under the acts relating to friendly societies, industrial and provident societies and literary and scientific institutions, see *Practice of the County Courts*, by Broom and Shelford, pp. 540—553, 2nd ed.

18. In case of the dissolution of any such society, such society shall nevertheless be considered as subsisting, and be in all respects subject to the provisions of this act, so long and so far as any matters relating to the same remain unsettled, to the intent that such society may do all things necessary to the winding-up of the concerns thereof, and that it may sue and sue, under the provisions of this act, in respect of all matters relating to such society.

Dissolution of society not to prevent winding-up of its affairs.

19. The provisions of the Joint Stock Companies

Provisions of joint stock

companies
acts to
apply.

Acts as to bills of exchange and the admissibility of the register of shares in evidence shall apply to all societies registered under this act (i).

(i) See 25 & 26 Vict. c. 89, ss. 37, 47, *ante*, pp. 45, 51.

Liability of
present
and past
members of
society (k).

20. In the event of a society registered under this act being wound-up, every present and past member of such society shall be liable to contribute to the assets of the society to an amount sufficient for payment of the debts and liabilities of the society, and the costs, charges and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, (that is to say,)

- (1.) No past member shall be liable to contribute to the assets of the society if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up;
- (2.) No past member shall be liable to contribute in respect of any debt or liability of the society contracted after the time at which he ceases to be a member;
- (3.) No past member shall be liable to contribute to the assets of the society unless it appears to the court that the existing members are unable to satisfy the contribution required to be made by them in order to satisfy all just demands upon such society;
- (4.) No contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a past or present member.

(k) See 25 & 26 Vict. c. 89, s. 38, *ante*, p. 45.

Society may
be consti-
tuted under
companies
acts.

21. Any society registered under this act may be constituted a company under the companies act by conforming to the provisions set forth in such act, and thereupon shall cease to retain its registration under this act.

22. Every person or member having an interest in the funds of any society registered under this act may inspect the books and the names of the members at all reasonable hours at the office of the society (l).

Members may inspect books.

(l) See 25 & 26 Vict. c. 89, s. 32, *ante*, p. 37.

23. The sheriff in Scotland shall within his county have the like jurisdiction as is hereby given to the judge of the county court in any matter arising under his act.

Sheriff's jurisdiction in Scotland.

24. A general statement of the funds and effects of any society registered under this act shall be transmitted to the registrar once in every year, and shall exhibit fully the assets and liabilities of the society, and shall be prepared and made out within such period, and in such form, and shall comprise such particulars as the registrar shall from time to time require; and the registrar shall have authority to require such evidence as he may think expedient of all matters required to be done, and of all documents required to be transmitted to him under this act; and every member of or any depositor in any such society shall be entitled to receive, on application to the treasurer or secretary of that society, a copy of such statement, without making any payment for the same.

Annual returns to be prepared as registrar may direct.

25. All penalties imposed by this act, or by the rules of any society registered under this act, may be recovered in a summary manner before two justices, as directed by an act passed in the eleventh and twelfth years of the reign of her present Majesty Queen Victoria, chapter forty-three, intituled 'An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders' (m).

Recovery of penalties.

(m) See 25 & 26 Vict. c. 89, s. 65, *ante*, p. 70.

26. This act may be cited as "The Industrial and Provident Societies Act, 1862."

Short title.

SCHEDULE OF MATTERS TO BE PROVIDED FOR
IN THE RULES (a).

1. Object and name and place of office of the society, which must in all cases be registered as one of limited liability.
2. Terms of admission of members.
3. Mode of holding meetings and right of voting, and of making or altering rules.
4. Determination whether the shares shall be transferable, and in case it be determined that the shares shall be transferable, provision for the form of transfer and registration of shares and for the consent of the committee of management and confirmation by the general meeting of the society; and in case shares shall not be transferable, provision for paying to members balance due to them on withdrawing from the society.
5. Provision for the audit of accounts.
6. Power to invest part of capital in another society; provided that no such investment be made in any other society not registered under this act, or the Joint Stock Companies Act, as a society or company with limited liability.
7. Power and mode of withdrawing from the society, and provisions for the claims of executors, administrators or assigns of members.
8. Mode of application of profits.
9. Appointment of managers and other officers, and their respective powers and remuneration.

(a) See *ante*, s. 4, p. 384.

COMPANIES FORMED BY LETTERS- PATENT UNDER 1 VICT. c. 73.

—◆—

7 WILL. 4 & 1 VICT. c. 73.

An Act for better enabling Her Majesty to confer certain Powers and Immunities on trading and other Companies (a). [17th July, 1837.]

WHEREAS divers associations are and may be formed for trading or other purposes, some of which associations it would be inexpedient to incorporate by

(a) Companies can still be formed under this act. See Companies Act, 1862, s. 4, *ante*, p. 2.

No company having the liability of its members limited by act of parliament or by letters patent shall register under part vii. of the Companies Act, 1862, as an unlimited company or as a company limited by guarantee. Sect. 179, pl. 2, *ante*, p. 220.

No company has power without the sanction of the board of trade to alter any provision contained in any letters patent relating to the company. 25 & 26 Vict. c. 89, s. 196, pl. 4, *ante*, p. 228.

Charters are obtained by petitioning the queen in council. How charters are obtained.
The petition and draft of the proposed charter are left at the council office, and are then referred to the board of trade. The colonial office, foreign office and India office are also referred to, if the proposed company falls within their departments. If it is determined that a charter shall be granted, it issues under the great seal. See Wordsworth on Joint Stock Companies, p. 235, 6th ed.; 1 Lindley on Partn. 115; see as to advertisements, 7 Will. 4 & 1 Vict. c. 73, s. 32.

A charter may be surrendered to the crown; but a surrender is of no effect unless accepted and enrolled in chancery. After the surrender has been accepted and enrolled, the corporation ceases to exist. See *Rex v. Osbourne*, 4 East, 326; Grant, 46.

Companies formed under this act are not corporations, and the privileges obtained by them depend upon the charter which is granted. 1 Lindl. on Partn. 117.

In *scire facias*, on the relation of a private prosecutor to Scire facias to repeal.
repeal a charter granted to a trading company, the charter is directed, amongst other things, that the company should not

royal charters, although it would be expedient to confer on them some of the privileges of and in-

begin business until it had been certified to the president of the board of trade by at least three of the directors that at least one-half of the capital had been subscribed for, and one-half at the least paid up. The charter contained a proviso, that in case the corporation should not comply with any of the directions and conditions contained in the letters patent it should be lawful for the queen, by any writing under the great seal or under the sign manual, to revoke the charter either absolutely or under such terms or conditions as she might think fit. The declaration contained a suggestion that although at the time when the company began business one-half of the capital had not been subscribed for, nor had one-half at the least of the capital been paid up, yet it had been certified by the directors falsely and untruly that at least one-half of the capital had been subscribed for, and one-half at the least paid up; and this suggestion being traversed, there was a verdict for the crown. On a rule to arrest the judgment, it was held by Lord Campbell, C. J., and Wightman, J., that the express power reserved to revoke wholly or in part was in addition to and consistent with the implied right of the crown to revoke the charter or to modify it, and that the assent of the attorney-general to the prosecution of the *scire facias* was of the same effect with regard to the maintenance of the proceeding as if the prosecution had been by the crown itself. *Reg. v. Eastern Archipelago Company*, 1 El. & Bl. 310; 17 Jur. 491; 22 L. J., Q. B. 196. It was held by Coleridge and Erle, Js., that the express power of revocation reserved to the crown superseded the implied power, and, therefore, that it was necessary that there should be a revocation by writing under the great seal or sign manual for that condition broken before any *sci. fa.* could be granted. The court, being equally divided, the rule dropped. The judgment therefore, *quod cancelletur*, was not arrested, but was given for the crown, and such judgment was afterwards affirmed by the Exchequer Chamber. 2 Ell. & Bl. 568.

The company afterwards petitioned the queen in council to instruct the attorney-general to enter a *nolle prosequi* in the suit, so as to prevent the revocation of the charter, or otherwise to grant a new charter. During the pendency of such petition, and prosecutor having taken steps to perfect the judgment obtained against the company and to procure the charter to be brought into the Court of Chancery to be cancelled, the company presented a petition to the lord chancellor praying that all further proceedings in the action of *scire facias* in which judgment had been given for the crown might be stayed either wholly or until such time as her

ident to corporations created by royal charters, and also to invest such associations or some of them with certain other powers and privileges: and whereas it would also be expedient to extend the powers of her Majesty in reference to the creation of corporations, and to the conferring of privileges upon corporations, and upon other bodies or companies enabled to sue and be sued: and whereas by act 6 Geo. 4, c. 91, it was amongst other things enacted, that in any charter thereafter to be granted by his majesty, his heirs or successors, for incorporation of any company or body of persons, it should and might be lawful in and by such charter to declare and provide that the members of such corporation should be individually liable in their persons and property for the debts, contracts and engagements of such corporation, to such extent, and subject to such regulations and restrictions, as his Majesty, his heirs or successors, might deem fit and proper, and as should be declared and limited in and by such charter, and the members of such corporation should thereby be rendered so liable accordingly: and whereas by an act 4 & 5 Will. 4, c. 94, his Majesty, his heirs and successors, were empowered to grant to unincorporated companies and associations certain privileges in such last-mentioned act set forth: and whereas the aforesaid provisions of the said recited acts have not been found

Majesty's pleasure in respect of the memorial presented to her by the company was declared.

It was decided that after a judgment in *scire facias* in the Court of Queen's Bench annulling letters patent, and directing that they should be restored to the Court of Chancery to be cancelled, the lord chancellor has no jurisdiction to stay the execution of the judgment, his duty in cancelling the instrument being only ministerial. Where a petition is presented in the petty bag in chancery to the lord chancellor, the clerk of the petty bag is the proper officer to draw up the order pronounced on such petition. *Reg. v. The Eastern Archipelago Company*, 4 De Gex, M. & G. 199.

As to the mode of obtaining the writ of *scire facias*, see Ell. & Bl. 352; Foster on Sci. fa., p. 247, &c.

So much of
6 Geo. 4, c.
91, as is
hereinbefore
set forth, and
the 4 & 5
Will. 4, c. 94,
repealed.

Privileges
may be
granted by
letters patent
to persons
associated
for trading or
other pur-
poses.

The letters
patent so
granted may
provide that
suits shall be
carried on in
the name of
one of the
officers of
any company
appointed for
that purpose.

effectual for the purposes thereby intended, and it is therefore expedient to repeal the same, and to make such provisions in reference to the several matters aforesaid as are hereinafter contained: It is therefore enacted by, &c., that so much of the said act 6 Geo. 4, c. 91, as is hereinbefore set forth, and also the said recited act 4 & 5 Will. 4, c. 94, shall be and they are hereby respectively repealed.

2. It shall and may be lawful for her Majesty, her heirs and successors, by letters-patent to be from time to time for that purpose issued under the great seal of the United Kingdom of Great Britain and Ireland, or in Scotland under the seal appointed by the articles of union to be used instead of the great seal thereof, to grant to any company or body of persons associated together for any trading or other purposes whatsoever, and to the heirs, executors, administrators and assigns of any such persons, although not incorporated by such letters-patent, any privilege or privileges which, according to the rules of the common law, it would be competent to her Majesty, her heirs and successors, to grant to any such company or body of persons in and by any charter of incorporation.

3. In any such letters-patent so to be granted as aforesaid by her Majesty, her heirs or successors, to any such company or body of persons so associated together as aforesaid, but not incorporated, it shall and may be lawful, in and by such letters-patent, either expressly or by a general or special reference to this act, to provide and declare that all suits and proceedings, whether at law, in equity, or in bankruptcy or sequestration, or otherwise howsoever, as well in Great Britain and Ireland as in the colonies and dependencies thereof, by or on behalf of such company or body, or any person or persons as trustee or trustees for such company or body, against any person or persons, whether bodies politic or others, and whether members or not of such company or body, shall be commenced and prosecuted in the name of one of the two officers

for the time being to be appointed to sue and be sued on behalf of such company or body, and registered in pursuance of the directions of such appointment and registration respectively hereinafter contained; and that all suits and proceedings, whether at law or in equity, by or on behalf of any person or persons, whether bodies politic or others, and whether or not members of such company or body, against such company or body, shall be commenced and prosecuted against one of such officers, or if there shall be no such officer for the time being, then against any member of such company or body: provided nevertheless, that nothing in this act or in such letters-patent contained or to be contained shall prevent the plaintiff from joining any member of such company or body with such officer as a defendant in equity, for the purpose of discovery, or in case of fraud. Proviso.

4. It shall and may be lawful, in and by such letters patent so to be granted to any such body or company as aforesaid, to declare and provide that the members of such company or body so associated as aforesaid shall be individually liable in their persons and property for the debts, contracts, engagements and liabilities of such company or body to such extent only *per share* as shall be declared and limited in and by such letters patent; and the members of such company or body shall accordingly be individually liable for such debts, contracts, engagements and liabilities respectively to such extent only *per share* as in such letters patent shall be declared and limited; such liability nevertheless to be enforced in such manner and subject to such provisions as are hereinafter contained. Individual liability of members of a company may be restricted by letters patent.

5. Every such company or body to which any such privileges or powers as hereinbefore mentioned shall be granted under the authority of this act shall be entered into or formed by a deed of partnership or association, or an agreement in writing of that nature; and the undertaking shall by such deed or agreement be divided into a certain number of shares Deed of partnership to be executed (b).

to be there specified; and in such deed or agreement, or in some schedule thereto, there shall be set forth the name or style of the said company or body, the names or styles of the members of the said company or body, the date of the commencement thereof, the business or purpose for which the said company or body is formed, and the principal or only place for carrying on such business; and in such deed or agreement there shall also be contained the appointment of two or more officers to sue or be sued on behalf of such company or body in manner hereinafter mentioned.

(b) See *Philipson v. Earl of Egremont*, 6 Q. B. 587.

Return to be made as hereinafter mentioned of the granting of letters-patent and style of company.

6. Such company or body as aforesaid shall, within three calendar months after the grant of such letters patent as aforesaid, make or cause to be made a return to such one of the offices for enrolment hereinafter mentioned as shall be required under the provisions of this act, containing the date of the grant of such letters patent as aforesaid, the name or style of the said company or body, the business or purpose for which the said company or body is formed, the principal or only place for carrying on such business, the total number of shares in the said company or body (and each of which shares is to be distinguished by a separate number in regular succession), the amount to which each share shall render the holder thereof liable, the names and (except as to bodies politic) the places of abode of all the members thereof, and the distinctive number or numbers of the share or respective shares which each member holds; and such company or body shall also at the same time make a return of the names and descriptions of the officers appointed by such company or body to sue and be sued on behalf thereof in manner aforesaid; such return to be made in the form in the Schedule (A.) to this act annexed.

Name of company not to be changed

7. During the continuance of any such company or body after it shall have been so registered no

change shall be made in the name or style thereof; and if the principal or only place for carrying on the business of the said company or body shall be changed the said company or body shall within three calendar months after such change make or cause to be made a return to the said office as aforesaid of such change in the form in Schedule (B.) to this act annexed.

8. In case any person shall cease to be a member of such company or body (except by means of the transfer by deed or writing of any share therein), or in case of the addition of any person thereto (except by means of the transfer of any share as aforesaid), or of the change of the name of any member thereof by marriage or otherwise, the said company or body shall, within three calendar months after information shall be received by the said company or body of any person so ceasing as aforesaid, or of such change or addition as aforesaid, make or cause to be made a return to the said office as aforesaid, containing the names and places of abode of all persons having ceased to be members thereof (except as aforesaid), and the names and places of abode of all persons having become members thereof (except as aforesaid), and specifying any change in the name of any member thereof by marriage or otherwise; such return to be made in one of the forms in the schedule (C.) to this act annexed, as the case may be.

9. On the transfer by deed or writing of any share in any such company or body as aforesaid, a notice in writing, specifying the date of such transfer, the distinguishing number of the share transferred, the name and (except in the case of a body politic) the place of abode of the person by whom or on whose behalf and of the name and (except as aforesaid) the place of abode of the person to whom such transfer is made, shall be given to the said company or body, by leaving the transfer, when executed by both parties, or some note or memorandum thereof signed

after registry.
If place of business changed, return to be made.

When persons cease to be members of company or corporation, except by transfer of shares, or of change of name of member, company to make return within three months.

On transfer of shares, notice to be given to the company or corporation by transferee.

by them, at the principal or only office of the said company or body.

Company or corporation to make return within three months after receiving notice of transfer.

10. In case of the transfer of any share in such company or body, the said company or body shall, within three calendar months after receiving such notice as aforesaid of such transfer, make or cause to be made a return to the said office as aforesaid, containing the date of such transfer, the distinguishing number of the share transferred, the name and (except in the case of a body politic) the place of abode of the person by whom or on whose behalf such transfer is made, and of the person to whom such transfer is made, in the form in schedule (D.) to this act annexed; and such company or body are hereby required, on the request in writing of either of the parties, forthwith to make such return accordingly.

Any person having made payment in respect of a share in a company under any judgment against such company to make a return thereof to Court of Chancery.

11. Where the extent per share of the liability of the individual members of any such company or body shall have been limited by letters patent as aforesaid, it shall be lawful for any person who shall or may from time to time have advanced or paid any sum in consequence or by virtue of any execution or diligence issued against him in respect of any share in such company or body, under any judgment, decree, interlocutor or order to be obtained against any officer of the said company or body, or any member thereof, in manner hereinafter mentioned, to make a return thereof to such office as aforesaid in the form in schedule (E.) to this act annexed; and every such return shall be accompanied with a proper voucher or vouchers of the fact of such payment, without which the same shall not be registered as hereinafter mentioned.

Company to make return when repayment is made of money so advanced by any person.

12. If any sum or sums shall at any time be repaid by any such company or body as last aforesaid in respect of any such sum which may have been so advanced or paid by virtue of such execution or diligence, the said company or body shall forthwith make or cause to be made a return to such

office as aforesaid, specifying the amount of such repayment, in the form in schedule (F.) to this act annexed.

13. In case of the death or resignation or removal of any officer appointed to sue and be sued on behalf of any company or body to be formed in pursuance of any of the provisions of this act, the said company or body shall forthwith appoint in his stead another officer to sue and be sued on behalf of such company or body, and shall, within three calendar months after the death, resignation or removal of such officer as aforesaid, make or cause to be made a return to the said office as aforesaid, containing as well the name and description of the person who has ceased to be such officer in manner aforesaid as the name and description of the officer who has been appointed to sue and be sued on behalf of such company or body; such return to be made in the form in schedule (G.) to this act annexed.

On death, resignation, or removal of officer appointed to sue and be sued on behalf of company or body, another to be appointed, and return made.

14. All returns to be made in manner aforesaid by such company or body shall be signed by one of such officers, and shall be verified by a declaration of such officer made pursuant to the provisions of the statute 5 & 6 Will. 4, c. 62, except that if there shall be no such officer, or such officer shall refuse to act, then such return shall be signed and verified as aforesaid by some member of the said company or body (*c*).

Returns how to be signed and verified.

(*c*) See the Form of Declaration under this act, *ante*, p. 224.

15. Any return to be made in manner aforesaid of the name or place of abode of any original member of such company or body, or of any person to or in whom any share in such company or body shall be transferred or become vested, shall not be rendered invalid for the purposes of this act by any error or omission in the same, if the said company or body shall, within one calendar month after information of such error or omission shall be received by such company or body, cause a correct

Return of names of members, &c. not to be rendered invalid by unintentional error.

return to be made to the said office as aforesaid in the form in schedule (F.) to this act annexed (*d*): provided always, that this clause shall not invalidate or prejudice any intermediate transaction or matter whatsoever which shall have *bonâ fide* taken place or proceeded upon the faith of such erroneous or defective return, nor shall the benefit of this clause extend to any error or omission which shall be fraudulent.

(*d*) See form (H.) in sched. to this act, *post*.

Returns, to what office to be made respectively in England, Scotland or Ireland.

16. Where the principal or only place for carrying on the business of any such company or body as aforesaid shall be situated in any part of England or Wales, the returns hereinbefore directed shall be made to the Enrolment Office of the Court of Chancery in England; and where such principal or only place for carrying on such business shall be situate in any part of Scotland, such returns shall be made to his Majesty's General Registry Office at Edinburgh; and where such principal or only place for carrying on such business shall be situated in any part of Ireland, such returns shall be made to the Enrolment Office of the Chancery in Ireland.

By whom returns are to be registered.

17. All such returns as are hereinbefore directed to be made to the Enrolment Office of the Court of Chancery in England shall be registered by the clerks of enrolments in chancery, or their deputy, and that all such returns as are hereinbefore directed to be made to the General Registry Office at Edinburgh shall be registered by the lord clerk register or his deputy, and all such returns as are hereinbefore directed to be made to the Enrolment Office of the Court of Chancery in Ireland shall be registered by the clerks of enrolments in chancery in Ireland, or their deputy, in books to be by them respectively kept for that purpose, and that an alphabetical index shall be kept of the names of such companies or bodies, with references to such returns, and that there shall be paid for the registering of each return a fee of sixpence per folio,

and no more; and that any person shall be at liberty to inspect such books and index, and that there shall be paid for such inspection a fee of one shilling, and no more; and that any person shall be at liberty to require a copy of any such return, to be certified by the said clerks or their deputy, and that there shall be paid for such certificate a fee of one shilling and sixpence for each folio of such copy, and no more; and the day of the registration of every return to be made in pursuance of this act shall be written on such return by the said clerks or their deputy.

18. A copy, so certified as aforesaid, of such return, including the date to be marked on such return, shall be received in evidence in all proceedings, whether civil or criminal, and shall also be received as evidence of the day of the registering thereof.

Certified copy of such return, &c. to be received in evidence.

19. Such orders and directions as to the forms of the returns to be made in pursuance of this act, and the mode of keeping the register, and of making the index thereof, and of any other matters incidental thereto, as may be deemed expedient, may from time to time be made, altered, or varied as follows; that is to say, as regards the registration to be made in the Enrolment Office in the Court of Chancery in England, by the Lord Chancellor, Lord Keeper, or First Lord Commissioner of the Great Seal, and the Master of the Rolls, jointly; as regards the registration to be made in the General Registry Office in Edinburgh, by the Lord Clerk Register and Lords of Council and Session jointly; and as regards the registration to be made in the Court of Chancery in Ireland, by the Lord Chancellor of Ireland and Master of the Rolls in Ireland jointly.

Regulations as to forms of returns and mode of keeping the register, &c. by whom to be made.

20. No person becoming a member of any such company or body by the transfer of any share therein, or otherwise, shall be entitled to sue for or recover any share of the profits thereof, unless and until a return of the transfer or other fact whereby

No person entitled to share in profits till registered as a member.

he shall so become a member shall be registered pursuant to the provisions hereinbefore contained.

Person
ceasing to be
a member to
continue
liable till
transfer, &c.
registered.

21. Any person ceasing to be a member of any such company or body, whether by the transfer of any share therein, or by death or otherwise, shall be considered for all purposes of liability as continuing a member of such company or body until a return of the transfer or other fact whereby he shall have so ceased to be a member shall be registered pursuant to the provisions hereinbefore contained (e).

(e) In *scire facias* against a defendant as a member of a company established under this act, it has been held that the declaration need not show whether the letters-patent contain any provision limiting the liability of the intending shareholder, such limitation being a matter which ought to be pleaded by the defendant, but fraud and collusion between the plaintiff and nominal defendant in the original action will be a good defence by plea to the *scire facias*, although redress would also, under such circumstances, be afforded to the party against whom it is sought to enforce the judgment. *Philpson v. Earl of Egremont*, 6 Q. B. 587.

Proceedings
commenced
in the name
of officer not
to be abated
by his death,
&c. or by
change of
members of
company.

22. No action, suit or proceeding, whether civil or criminal, commenced either by or against any such company or body (whether in the name of one of the officers appointed to sue and be sued as aforesaid, or of some member of such company or body, in the case and in manner aforesaid), shall be abated or prejudiced by the death or by any act of such officer or person, or by the resignation or removal of such officer, either before or after the commencement of such action, suit or proceeding, or by any change in the members of such company or body by the transfer of shares or otherwise, but that the same shall be continued in the name of such officer or member (as the case may be) notwithstanding such death or act, or such resignation or removal, and notwithstanding such change in the members of such company or body.

Evidence of
officer or of
member of
company ad-
missible.

23. In all such actions, suits and other proceedings, whether civil or criminal, the evidence of any such officer as aforesaid, or of any member of such company or body, shall be admissible in the

like manner as if such officer or member were not an officer or member of such company or body.

24. All judgments, decrees, interlocutors and orders obtained in any such actions, suits or other proceedings as aforesaid against such officer or member in manner aforesaid, whether such member or officer respectively be party to such actions, suits or proceedings, as plaintiff, pursuer, petitioner or defendant or defender, shall have the same effect against the property and effects of such company or body, and also (to the extent hereinafter mentioned) against the persons, property and effects of the individual existing or former members thereof respectively, as if such judgments, decrees, interlocutors or orders had been obtained against such company or body in suits or proceedings to which all the persons liable as existing or former members of such company or body had been parties, and that execution or diligence, or executions or diligences shall be issued thereon accordingly: provided nevertheless, that where the extent per share of the liability of the individual members shall have been limited by any letters patent as aforesaid, no such execution or diligence shall be issued against any such individual existing and former member of such company or body as aforesaid for a greater sum than the residue, if any, of the amount for which, by virtue of such letters patent as aforesaid, such individual member shall be liable in respect of the share or shares then or theretofore held by him in the said company or body, after deducting therefrom the amount, if any, which shall appear by such register as aforesaid to have been advanced and paid in respect of such shares or any of them by himself or herself, or any previous or subsequent holder of the same shares or any of them, or the representatives of any such holder, under by virtue of any former execution or diligence, and not repaid at the time of issuing such subsequent execution or diligence.

Effect of judgments against company (f).

(f) See *Philipson v. Earl of Egremont*, 6 Q. B. 587.

Bankruptcy of officer of company not to affect company or liabilities of members.

25. The bankruptcy, insolvency or stopping payment of any officer or member of such company or body in his individual capacity shall not be construed to be the bankruptcy, insolvency or stopping payment of such company or body; and that the property and effects of such company or body, and the persons, property and effects of the individual members or other individual members thereof (as the case may be), shall, notwithstanding such bankruptcy, insolvency or stopping payment, be liable to execution or diligence in the same manner as if such bankruptcy, insolvency or stopping payment had not taken place.

Service of notice on the company.

26. In all cases wherein it may be necessary for any person to serve any summons, demand or notice, or any writ or other proceeding at law or in equity, or otherwise, upon the said company or body, service thereof respectively on the clerk of the said company or body, or by leaving the same at the head office for the time being of the said company or body, or in case such clerk of the said office shall not be found or known, then service thereof on any agent or officer employed by the said company or body, or by leaving the same at the usual place of abode of such agent or officer, shall be deemed good and sufficient service of the same respectively on the said company or body.

Service of notice by the company.

27. In all cases wherein it may be necessary for the said company or body to give any summons, demand or notice of any kind whatsoever to any person or corporation, under the provisions or directions contained in this act, such summons, demand or notice may be given in writing, signed by the clerk, attorney or solicitor for the time being of the said company or body, without being required to be under the common seal of the said company or body.

Determination of company not to prevent the winding up of their affairs.

28. In case of the determination of such company or body, such company or body shall nevertheless be considered as subsisting, and to be in all respects subject to the provisions of this act, so long and so far as any matters relating to such company

or body shall remain unsettled, to the end and intent that such company or body may do all things necessary to the winding-up of the concerns thereof, and that it may be sued and sue under the provisions of this act in respect of all matters relating to such company or body.

29. It shall be lawful for her Majesty, her heirs and successors, in any charter of incorporation to be hereafter granted, to limit the duration thereof for any term or number of years, or for any other period whatsoever; and also in any charter of incorporation (whether in perpetuity or for any term or period), either by reference to this act or otherwise, to make the corporation thereby formed, and the officers and members thereof, subject to all of the provisions, liabilities and directions hereinbefore authorized to be imposed on or required from any unincorporated company or body, or its officers or members, and also to confer on such corporation or its members and officers all the powers or privileges hereinbefore authorized to be conferred on any unincorporated company or body, or its officers or members; and all the powers, provisions, clauses, matters and things hereinbefore contained in reference to unincorporated companies or bodies shall accordingly in such case, and so far as the same may be applicable, be considered to belong and apply to such corporation.

Duration of
charters of
incorpora-
tion may be
limited.

30. Nothing in this act contained shall authorize or be construed to authorize her Majesty, her heirs and successors, by any such letters-patent, to exempt any company or body of persons associated as aforesaid from the necessity of entering into a deed of partnership, from making the return of the patent to the Eurolment Office of the Court of Chancery, from the necessity of carrying into execution the provisions of this act in respect to change of name or style of the company or body associated, in respect to the cessation, or to the addition, or to the change of name of any of the individuals of the company, or to the transfer of shares and to the

Limitations
as to exemp-
tions to be
granted to
companies
by letters-
patent.

notices to be given thereof, or to the payment of any sum by any shareholder on account of any preferment against such company or body, or to the returns to be made to the Enrolment Office of such payment, or of the repayment thereof, or from making a return to the said office of the name of the officer appointed by said company to sue and be sued on its behalf, in case of the death, resignation or removal of the one registered, or to exempt any company or body so associated from the provisions of this act in relation to the period at which its several members shall become entitled or shall cease to share in the profits thereof, the whole as required by the provisions of this act.

Act not to
affect exist-
ing privi-
leges.

31. Nothing in this act contained shall authorize or be construed to authorize the grant to any company or body of persons of any privilege in derogation of any exclusive privileges now enjoyed by any company or corporation under any act or acts of parliament.

Notice of
application
for letters-
patent to be
inserted in
the London
Gazette, &c.

32. Whenever an application shall be made to her Majesty to grant letters-patent or a charter of incorporation to any company or body of persons associated together for any purpose of trade, and such application shall have been referred by her Majesty to the Committee of Privy Council for Trade and Plantations, then, before any report shall be made to her Majesty, and before any such letters-patent or charter shall be granted, notice of such application shall be inserted by the parties applying three several times in the London Gazette and in one or more of the newspapers circulating within the county in which it is proposed that the principal place of business of such company shall be established, at intervals of not less than one week.

SCHEDULE (B.), s. 7, *ante*, p. 396.

Return made pursuant to Statute Vict.

CHANGE OF PLACE OF BUSINESS.

Name of Company or Body.	Business or Purpose.	Former Place [<i>or principal Place, if more than one</i>] of Business.	Present Place [<i>or principal Place</i>] of Business.

I [*&c. as before.*][*Date.*][*Declared, &c.*][*Signature.*]SCHEDULE (C.), s. 8, *ante*, p. 397.

Return made pursuant to Statute Vict.

CHANGE OF MEMBERS.

Name of Company or Body.	Business or Purpose.	Place [<i>or principal Place, if more than one</i>] of Business.

[*Names and places of abode of all persons having ceased to be members (except by transfer of shares) since the last return*
Dated the day of .]

[*Names and places of abode of all persons who have become members (except by transfer of shares) since the last return*
Dated the day of .]

[*Former names and places of abode of persons whose names have been changed.*]

[*Present names and places of abode of persons whose names have been changed.*]

I [*&c. as before.*][*Date.*][*Declared, &c.*][*Signature.*]

SCHEDULE (D.), s. 10, *ante*, p. 398.

Return made pursuant to Statute Vict.

TRANSFER OF SHARES.

Name of Company or Body.	Business or Purpose.	Place [<i>or principal Place, if more than one</i>] of Business.	
Name and Place of Abode of Person by whom Transfer is made.	Name and Place of Abode of Person to whom Transfer is made.	The distinctive Numbers of the Shares transferred.	Date of Transfer.

I [*&c. as before.*][*Date.*]

[Declared, &c.]

[*Signature.*]SCHEDULE (E.), s. 11, *ante*, p. 398.

Return made pursuant to Statute

Vict.

PAYMENT BY INDIVIDUAL MEMBER.

Name of Company or Body.	Business or Purpose.	Place [<i>or principal Place, if more than one</i>] of Business.	
Name and Place of Abode of Individual Member.	Distinctive Numbers of the Shares in respect of which Payment is made.	Sum paid in respect of each Share.	Total Amount paid under Exemptions or Diligence.

I [*&c. as before.*][*Date.*]

[Declared, &c.]

[*Signature.*]

T

SCHEDULE (F.), ss. 12, 15, *ante*, pp. 398, 400.

Return made pursuant to Statute

Vict.

PAYMENT TO INDIVIDUAL MEMBERS.

Name of Company or Body.	Business or Purpose.	Place [or principal Place, if more than one] of Business.	
Name and Place of Abode of individual Member.	Distinctive Numbers of the Shares in respect of which Repayment is made.	Sum repaid in respect of each Share.	Total Amount repaid to individual Member.

I [*&c. as before.*][*Date.*]

[Declared, &c.]

[*Signature.*]SCHEDULE (G.), s. 13, *ante*, p. 399.

Return made pursuant to Statute

Vict.

CHANGE OF OFFICER.

Name of Company or Body.	Business or Purpose.	Place [or principal Place, if more than one] of Business.

[*Name and description of the person who has ceased to be*

officer to sue and be sued on behalf of the company or body since the last return. Dated .]

[Name and description of the officer appointed to sue and be sued on behalf of the company or body since the last return. Dated .]

I [&c. as before.]

[Date.]

[Declared, &c.]

[Signature.]

SCHEDULE (H.), s. 15, ante, p. 399.

Return made pursuant to Statute

Vict.

CORRECTED RETURN.

[Copy of former incorrect return.]

(Copy.)

Amended return with correct names and descriptions [in such of the preceding forms as are applicable to the case under the provisions of the foregoing act].

I [&c. as before.]

[Date.]

[Declared, &c.]

[Signature.]

ADDITIONAL NOTES

ON THE FOLLOWING SUBJECTS.

I. OF SHARES AND SHAREHOLDERS.

1. *Of Contracts respecting Shares.*
2. *Of the Forfeiture of Shares.*
3. *Of Calls in respect of Shares.*
4. *Of Interest, Dividends and Bonus in respect of Shares.*
5. *Of the bequest of Shares.*

II. OF DIRECTORS.

1. *Of Powers of Directors.*
2. *Disqualifications of Directors.*
3. *Proceedings of Directors.*

III. OF PROCEEDINGS AT LAW AND IN EQUITY BY AND AGAINST COMPANIES.

IV. CONVENTIONS RELATIVE TO JOINT STOCK COMPANIES, AND HEREIN OF FOREIGN COMPANIES.

I. OF SHARES AND SHAREHOLDERS.

1. *Of Contracts respecting Shares.*

Specific
perform-
ance.

As to what amounts to a contract to take shares, see *ante*, p. 6. Specific performance was decreed of a contract to sell shares in a company, although the deed of settlement provided that no shareholder should be at liberty to transfer his shares, except in such manner as the board should approve, and the board refused to give its consent to the transfer. *Poole v. Middleton*, 7 Jur. N. S. 1262; 9 W. R. 758. As to the specific performance of an agreement to take shares, see *ante*, pp. 26, 27.

In a case where there is a clear contract to accept shares and the remedy at law is shown to be inadequate, the

court will decree specific performance. But where the validity of the contract to accept the shares was doubtful, and the inadequacy of the legal remedy not clearly made out, and there had been an unexplained delay of two years, a demurrer to a bill for specific performance of a contract to accept shares was allowed with costs. *Oriental Inland Steam Company (Limited) v. Briggs*, 2 Johns. & H. 625; *New Brunswick Company v. Muggeridge*, 4 Drew. 686; *Sheffield Gas Company v. Harrison*, 17 Beav. 294; *Shaw v. Fisher*, 2 De G. & S. 11; *Cheale v. Kenward*, 3 De G. & J. 27.

An agreement to accept a transfer of railway shares on which nothing had been paid is not a *nudum pactum*, but a contract which may be specifically enforced in equity. *Cheale v. Kenward*, 3 De G. & J. 27; 4 Jur. N. S. 981; 27 L. J., Ch. 784.

The defendant executed a deed of transfer of shares from the plaintiff to himself at the instance and, as he believed, as the nominee of a third party, and upon the faith of the representations made by him that the purchase-money had been paid as it was expressed to be in the deed. The purchase-money was not in fact paid. The transferor filed a bill for payment: it was held, that the deed of transfer constituted a contract between the parties, and, that notwithstanding the statement in the deed of transfer of the receipt of the purchase-money, the defendant was liable to pay the amount. *Wilson v. Keating*, 5 Jur. N. S. 815; 28 L. J., Ch. 895; 4 De G. & J. 588.

At a meeting specially convened of a joint stock company established for granting insurance on lives, it was resolved to extend the business to marine insurances. The resolutions were afterwards confirmed, and a deed which embodied them was executed by some but not by all the shareholders. In the annual return to the joint stock company's registry office the business of the company was stated to include marine insurance. The reports of the directors several times alluded to the extension of the business, and on one occasion a report which alluded to such extension accompanied the dividend warrant. The extended business was carried on for a year and a half, when the company was ordered to be wound-up: it was held, that the general body of shareholders was not bound by acquiescence or otherwise to the alteration of the business involved in the extension, and consequently that the holders of marine insurances could not

Extension of
objects of
company.

come in as creditors of the company in respect of losses upon such policies. It was, however, held that the holders of such policies might claim in respect of the premiums actually paid. It was questioned what amount of acquiescence will bind shareholders to a change in the objects of their company. The creditors' representative only represents actual creditors of the company, and cannot be heard on behalf of a class of persons seeking to be admitted as creditors. *Re Phoenix Life Insurance Company, Burgess and Stock's Case*, 9 Jur. N. S. 15; see *Ernest v. Nicholls*, 6 H. L. C. 401.

The holders of shares bought in open market, although they may have been fraudulently issued by the directors, cannot on that ground claim relief against the other shareholders, whatever may be their rights and remedies against the directors. *Ex parte Grisewood*, 5 Jur. N. S. 1192; 28 L. J., Ch., 769.

Every person purchasing shares in a company formed for working mines in South America, and whose shares are transferable by delivery, takes them subject to the liabilities of the company at the time of the purchase. *Ib.*

An indorsement on scrip certificates as to the extent of the liability of shareholders, which was untrue in point of law, is not such a misrepresentation as to render a stock broker dealing with the shares liable to penal consequences and to protect him from giving discovery. *Ex parte Aston*, 5 Jur. N. S. 779; 28 L. J., Ch. 631—L. J.

A contract for the sale of shares in a cost book mine is not necessarily a contract for an interest in land within the 4th sect. 29 Car. 2, c. 3. *Walker v. Bartlet*, 18 C. B. 845; 2 Jur. N. S. 643; *Powell v. Jessopp*, 18 C. B. 336; 25 L. J., Exch. 199.

Provisional directors entered into an agreement to give a projector 2,500*l.* in money and 2,500*l.* in paid-up shares. The projector having executed for 350 of these shares, it was held that the company was not bound by the agreement, and, although they repudiated it, still that the projector was liable unconditionally as a contributory in respect of the 350 shares. *Nicholl's Case, Cosmopoliton Life Insurance Company*, 24 Beav. 639.

A company had called up and expended in 1851 all the capital contemplated by the deed, viz., 10*l.* per share. The company had been established in 1849 professedly on the cost-book principle, with monthly meetings, three directors, one to retire annually, and no new member to be admitted until approved by a board of directors. After

1851 no new directors were appointed. In March, 1852, the company being indebted to S., one of the shareholders, in 1,000*l.*, a meeting was called and held some time in the spring or summer of that year, at which all the adventurers attended; it was then resolved that the whole authority of the board of directors should be handed over to the secretary, to be exercised under the supervision of S. alone, who was to furnish all monies necessary to work the mine, and to try and redeem what had been already lost. Previously to this meeting, viz., in 1851, P., one of the shareholders, being indebted to De C., placed in deposit with him ten shares as a security. After the meeting, P., without informing De C. of the change of circumstances in the company, offered to relinquish the ten shares to De C. in part payment. In December, 1852, De C., having put inquiries to the secretary, which were satisfactorily answered, agreed in writing to take these shares on the same terms as P. held them. In April, 1853, De C. endeavoured to sell the shares to other parties, and with that view applied to be admitted on the register as a transferee. This was at first refused, but ultimately assented to, but no such registration ever took place. The next meeting did not take place till 1854, when it appeared that the loss for which the company was liable to S. amounted nearly to 5,000*l.* In 1856 S. alone presented his petition to have the company wound up, on which an order was made accordingly: it was held, that De C. was not liable to be placed on the list of contributories. *Re Court Grange Silver Lead Company, De Castro's Case*, 2 Jur. N. S. 1203—V. C. W.

The test applied was, not whether De C. could have insisted, as against P., on having the shares, but whether P. could have insisted on a specific performance of the agreement of December, 1852, and held that P. could not have done so. *Ib.*

Under the above circumstances: it was held that the company in 1852, at the time of the contract, was no longer carrying on business under their deed; that P. knew that fact, and that De C. did not know it, and therefore that the contract could not be sustained. *Ib.*

By the deed of settlement of a company it was provided that the capital should consist of 100 shares. The company subsequently at a general meeting created half-shares, and the defendant afterwards purchased some of these shares and received the dividends and executed the deed of settlement. The company afterwards re-agreed

When shareholder cannot dispute validity of shares.

to dissolve and wind-up under the Joint Stock Companies Acts, 1856 and 1857, and the defendant was sued for calls made by the directors and by the liquidators of the company: it was held that he was estopped from disputing the validity of the creation of the half-shares. *Hull Flax and Cotton Mill Company v. Wellesley*, 30 L. J., Exch. 5.

In an action against a public company for improperly withholding shares after tender of the sum due for calls and interest, the proper measure of damages is the value of the shares at the market price of the day of the tender, deducting the amount of the calls and interest. *Van Diemen's Land Company v. Cockerell*, 1 C. B., N. S. 732.

Where in an action for non-acceptance of shares, the bought and sold notes, which constituted the written contract, provided expressly for the time for payment, but were wholly silent as to the time of delivery of the shares: it was held, that parol evidence was admissible of a custom among brokers of mining shares that the vendor was not bound to deliver the shares without contemporaneous payment. *Field v. Lelean*, 6 H. & N. 617; 30 L. J., Exch. 168; 9 W. R. 387—Exch. Cham.

A. deposited with B. certain share certificates in a gas company as a security for a loan, and afterwards by deed assigned all his personal estate to two trustees for the benefit of his creditors. The assignees gave notice of the assignment to the company, but B. omitted to give notice of his equitable lien: it was held, that notwithstanding the omission of such notice, the two trustees could not maintain trover against B. for the share certificate, who was not guilty of a wrongful conversion of the shares, as they were deposited with him as a security for a debt. *Broadbent v. Varley*, 12 C. B., N. S. 214.

The plaintiff agreed to transfer certain shares to the defendant, who agreed to take the same and to indemnify the plaintiff from future calls. No deposit on the shares had been paid by the plaintiff. On a bill filed for a specific performance on the ground of no consideration, a demurrer which had been allowed by the Master of the Rolls was overruled by the Lord Chancellor. *Cheale v. Kenward*, 4 Jur. N. S. 984; 27 L. J., Ch. 784.

A banking and loan company was formed in England for the purpose of carrying on banking business in the colonies and particularly in Australia. According to a scheme, a prospectus of which was issued in Australia, the company had registered certain shares to be called

"colonial shares," and also shares for the purpose of being issued to persons desirous of taking them in part payment of any loan which they might contract. These shares were to bear interest at 6l. per cent. for two years, and the manager was authorized to give off a limited number of English shares, which were transferable either in the colony or in England. It was conceived that these shares would be an advantageous mode of remitting money to England. Share certificates were accordingly issued by the manager at Sydney, upon which it was stated that "notice of certificates sent to England and the names of parties to whom transmitted must be given to the manager at Sydney." The company also furnished blank powers of attorney for the execution of the deed of settlement in London in the names of the parties to whom the shares were issued, and also to receive dividends and sell the shares. M., to whom some of these shares had been issued, sold his certificates to D. and executed the powers of attorney. D., in 1851, sold and assigned the shares to H., who had previously been informed at the Sydney office that there would be no difficulty in the sale and transfer of the shares: it was held, the company could not, as against these shares, assert a lien in respect of a debt due from the person to whom they were originally issued. In 1843 H. filed a bill in equity in the supreme court at Sydney, claiming to be admitted as a shareholder in respect of these shares, and the court dismissed the bill; but on the ground of the allegations and equity of the bill at Sydney being different from the allegations and equity of the bill in this court, the decision at Sydney was held (reversing the decision of one of the Vice Chancellors) not to be conclusive against the plaintiff here. The plaintiff's bill in Sydney having been dismissed in December, 1843, he did not file his bill in the Court of Chancery until the 10th of January, 1859, but as the shares still remained in M.'s name, and the dividends thereon had been from time to time applied in payment of the alleged lien, the plaintiff's right was not lost by delay. *Hunter v. Stewart*, 31 L. J., Ch. 346.

Shares in a projected railway company with limited liability were allotted in payment of the purchase-money of property on which the intended company was about to carry on its business, and were accepted and treated by the vendor of such property as paid-up shares, and he afterwards transferred to each of the directors of the com-

Paid up
shares.

pany 100 of them. A commissioner of bankruptcy, in winding up the company, placed the names of each of such directors upon the list of contributories and made a call upon them. The lords justices on appeal decided that as the shares had been allotted to a stranger as paid-up shares they must be so considered, and the directors' names removed from the list in respect of them.

The directors awarded fees to such of their body as should attend their board meetings, and afterwards allotted shares to such of those members as attended according to the number of their attendancies, which shares they deemed to be fully paid-up shares: it was held by the Court of Appeal, that it had no power to alter the agreement which had been come to, and that the shares, having been issued as paid-up shares, must be so treated. *Ex parte Currie v. Great Northern and Midland Coal Company (Limited)*, 32 L. J., Ch. 57.

A registered shareholder in a railway company, which was afterwards incorporated with a new company by an act of parliament enacting that every registered shareholder in the old company should be deemed to hold a share in the new company, to be called a deferred share, and entitled on demand to receive a certificate for such deferred share, was held to be entitled to sue in respect of the funds of the new company, although he had not exchanged his shares or received a certificate as a shareholder in the new company. *Spackman v. Lathmore*, 3 Giff. 16; 7 Jur. N. S. 179; 9 W. R. 229.

A company, whose shares were made transferable by the delivery of the certificate, is not on that ground illegal at common law, and the fact that such shares of such a company, which was formed before 7 & 8 Vict. c. 110, having become vested in other persons since the passing of that act, did not make the company subject to its provisions. *Re Mexican and South American Company, ex parte Aston*, 4 De G. & J. 326; 26 Beav. 474.

2. Of the Forfeiture of Shares.

Several cases on the forfeiture of shares have been already stated, *ante*, p. 139.

Forfeiture of shares.

There is no inherent power in the directors or in a general meeting of the shareholders in a company to declare a forfeiture of shares. *Ex parte Barton, re National Patent Fuel Company*, 4 Drew. 535; 5 Jur.

N. S. 306 ; 7 W. R. 369 ; affirmed on appeal by Lords Justices, 5 Jur. N. S. 420 ; 28 L. J., Ch. 637.

Therefore a person who had taken shares, but had not signed the deed, and whose shares had been declared to be forfeited by the directors, with the sanction of a general meeting of the shareholders, was not relieved from his liability as a contributory, the forfeiture being *ultra vires* and the directors not being expressly empowered by the deed to forfeit shares. *Ib.*

Where the deed of settlement authorizing a call from subscribers and to declare a forfeiture of the shares of subscribers who did not execute the deed, but the subscription contract did not make non-payment of the call a ground for forfeiture, the directors could not declare a forfeiture for non execution of the deed of settlement. *Newman v. Mitchell*, 5 De G., M. & G. 648.

Power in co-adventurers to forfeit the shares of one of their number for non-payment of calls is not necessarily incident to a mining adventure conducted on the cost-book principle. *Clarke v. Hart*, 6 H. L. Cas. 633 ; 5 Jur. N. S. 447 ; 27 L. J., Ch. 615 ; 6 De G., M. & G. 232. As to companies governed by the Companies Clauses Consolidation Act, 1845, see 8 & 9 Vict. c. 16, ss. 29—35. Shelford on the Law of Railways, pp. 143—150, 3rd ed.

The discretion of directors to forfeit shares for non-payment of calls is a trust to be exercised for the benefit of all the shareholders. *Harris v. North Devon Railway Company*, 20 Beav. 384.

Where a company's deed provided that if any member should, from any cause whatever, permit any monthly subscription on any share or shares held by him to be in arrear for six months, such share or shares and all monies paid in respect thereof should, at the expiration of six months, become absolutely forfeited to the company : it was held, that the neglect of a member to pay his subscriptions and fines for six months operated as a forfeiture of his share or shares, at the election of the directors. *Moore v. Rawlins*, 6 C. B., N. S. 289 ; see *Rede v. Farr*, 6 M. & Selw. 121 ; *Doe d. Bryan v. Banks*, 6 B. & Ald. 401 ; *Armsby v. Woodward*, 4 B. & Ald. 519.

Where ten days' notice is required to be given to a shareholder before a declaration of forfeiture of shares, a notice given only nine days before is a nullity. *Watson v. Eales*, 23 Beav. 294.

A shareholder in a joint stock company has a right of action against the directors of a company for not registering the name of a transferee of shares in their books, and for declaring such shares to be forfeited, and for confirming such forfeiture, as by such acts the shareholder had been deprived of his ordinary privileges as shareholder, and of the contingent profits upon his shares. *Catchpole v. Ambergate, &c. Railway Company*, 1 El. & El. 111.

The manager and secretary of a joint stock company, who had furnished the detailed statements and were cognizant of a fraudulent report, were held to be liable to third persons who, upon the faith of such reports, had become shareholders in the company. *Cullen v. Thompson*, 9 Jur. N. S. 85.

A bill filed by an English shareholder against a Dutch railway company for relief against a forfeiture of shares, was dismissed with costs, the undertaking and direction being foreign, and there being a decision in the Dutch courts opposed to the plaintiff's view. *Sutton v. Dutch Rhenish Railway Company*, 21 Beav. 43.

The shares in a joint stock company with a deed of settlement can only be forfeited or transferred in the mode pointed out by such deed. But that doctrine is not applicable to an allottee of shares who has never executed the deed so as to become a shareholder; such allottee has a right to become, and perhaps may be compelled to become, strictly a shareholder, but, until he is clothed with that character, he is merely connected with the company by contract, and it is competent to the allottee and the directors of the company to determine such contract. *Re Kollman's Railway, &c. Company, Ex parte Beresford*, 2 Hall. & T. 388; 2 Mac. & G. 195; *Bailey's Case*, 15 Jur. 29.

Where the deed of settlement was so framed as to give only the alternative remedy of suing or of declaring the shares to be forfeited, and the company having sued for the calls and obtained judgment, a subsequent declaration of the forfeiture of the shares was decided to be a nullity. *Giles v. Hutt*, 3 Exch. 18; see *Great Northern Railway Company v. Kennedy*, 4 Exch. 417; *Edinburgh, Leith, &c. Company v. Hobbwhite*, 6 M. & W. 707.

One of the directors and promoters of a company took 500 shares, in order to enable the company to be registered; calls were made on those shares, and at a meeting

of the directors, by a resolution seconded by a director, his shares were declared to be forfeited, and shares bearing the same numbers were issued to other persons: it was held, that the director was still liable as a contributory in respect of those shares. At a meeting of directors a sum of money was voted to this director for introducing a new manager, and in consideration of an equal sum this director was free from all liability as to the forfeited shares: it was held, that he was liable as a contributory in respect of those shares. *Re London and County Insurance Company (Jones's Case)*, 4 Jur. N. S. 448 ; 27 L. J., Ch. 666.

A shareholder in an insurance company was served with notice of a call, which was not paid, and legal proceedings having been threatened, were afterwards commenced against him for the recovery of the amount. The deed of settlement provided, that if any instalment of the amount payable upon shares should not be paid within a limited time, the shares in respect of which the instalment was payable should be *ipso facto* forfeited to the company, and that the directors should, notwithstanding such forfeiture, enforce the payment of such instalment. In a balance sheet and report put forward by the directors at the time when the forfeiture accrued, sums were credited to the company as arising from the forfeiture of the shares of such shareholder and other defaulting shareholders for non-payment of the call. The court decided, at the instance of the official managers, that the defaulting shareholder was not liable to be placed on the list of contributories in respect of the shares held by him, which had been clearly treated by the directors as forfeited. *Re State Fire Insurance Company, Webster's Case, Whiting's Case*, 11 W. R. 226; see *Woollaston's Case, Re Home Counties Assurance Company*, 4 De G. & S. 457.

It is a principle of the Court of Chancery to act severely with any irregularities on the part of an agent towards his principal, and to require an agent to act for the benefit of his principal, and to preserve correct accounts of all dealings and transactions between them. The loss, and more especially the destruction of evidence by the agent, falls most heavily on himself. *Haig v. Gray*, 20 Beav. 219.

If a company does not discover, and has not the means of discovering the correctness of entries in a succession of accounts rendered by their agent, they are not, after his decease, precluded by lapse of time or by certain share-

holders *omitting against opposition* to press for explanations previously asked, from showing that such entries are not only erroneous, but fraudulent. Where the accounts of an agent acting for a company have been improperly kept or mystified, and not duly rendered and explained when asked for, they will be directed by the court to be taken through a period of twenty-five years, though accounts sent in had been acted on, and though shareholders who asked for information and explanations on such accounts did not persevere to obtain them. The manner in which the court will direct the accounts to be taken is pointed out in this case. *Stainton v. Carron Company*, 27 L. J., Ch. 89; 3 Jur. N. S. 1235.

Equity will not relieve against forfeiture under bye-law.

A court of equity will give no relief against a forfeiture under a bye-law of an incorporated company, providing that the members shall receive notice of default in paying a call, and incur the forfeiture by non-payment ten days after the notice sent, though the lapse arose from ignorance of the call, from accidental circumstances, and absence from town when the notice was sent. The accident in this case was only want of precaution. The plaintiff did not inform himself of the orders and rules of the company. It was easy for the plaintiff to direct the secretary to send the notices as he pleased. The court cannot relieve against such accidents. The plaintiff ought to have taken all due pains to inform himself. *Sparkes v. Liverpool Waterworks Company*, 13 Ves. 428.

A motion to restrain a company from declaring a forfeiture of shares, by reason of the non-payment of calls, alleged to be made for illegal purposes, was refused; although it appeared that the directors had conducted the proceedings, in many particulars, in a very improper manner, it being sworn that money was wanted to satisfy existing legal obligations of the company, and it being denied that the company sought to enforce the calls for illegal purposes. *Logan v. Earl Courtown*, 13 Beav. 22; 20 L. J., Ch. 347.

By a company's act, shares were to be forfeited on non-payment, within a given time, of calls; and under certain circumstances, shareholders were entitled to receive interest on their paid-up calls. A shareholder who became so entitled to interest neglected to pay up a further call within the prescribed time. On a motion on her behalf to restrain the company from forfeiting the shares, she having offered to pay the difference between the amount of the call and the interest that was due to

her, she was permitted to pay the amount under protest, and without prejudice to the question in the cause. *Naylor v. South Devon Railway Company*, 11 Jur. 31; 1 De G. & S. 32; see *Pearson v. London and Croydon Railway Company*, L. J. 1845, Ch. 412; 14 Sim. 541.

The directors of a joint stock mining company, which was established in 1825, with a capital of two hundred shares of 50*l.* each, in respect of which calls to the full amount was shortly afterwards made, having occasion for a further capital for the purpose of carrying on the concern, which turned out unprofitable, proceeded under the powers of the deed constituting the company to raise money by several additional calls upon the existing shares. The plaintiff, who was a shareholder, and paid all previous calls to the full amount of the original shares, disputed the payment of the additional calls until August, 1828, and in July in that year his shares were declared to be forfeited. The company's speculation was conducted with loss until 1835, from which time forward considerable profits were realized. The plaintiff did nothing from 1828 until 1837, and in 1838 he filed his bill claiming a right to participate in the profits of the mine upon payment of his proportion of the expenses of working it. It was held that the plaintiff, having lain by when the concern was in a declining state, without any attempt to assert his right, was not entitled in equity, after the risk was over, to a share in the profits of the adventure. *Prendergast v. Turton*, 8 Jur. 205; L. J. 1844, Ch. 268; 1 Y. & Coll. C. C. 98. By one of the clauses in a deed of settlement on the formation of a joint stock banking company it was provided, "that all debts due to the company by or on the part of any proprietor in respect of cash advances or otherwise, should at all times and in all cases be the first and paramount lien on all the shares and stock of such proprietor; and the directors were empowered to cancel, extinguish and declare forfeited, or to sell and dispose of such shares, either wholly or in part, as the case might require, by way of or towards satisfaction or liquidation of such debt; and that every such person should thenceforth cease to be a proprietor of the company or to retain any interest therein in respect of the shares so cancelled, extinguished and declared to be forfeited, or so to be sold or disposed of as aforesaid." A holder of 1,000 shares being indebted to the bank for cash advances, a notice was given to him that unless he redeemed the 1,000 shares by payment of

Forfeiture of shares set aside.

the balance of his account with the bank, within fourteen days, the directors would on that day cancel and extinguish and declare his shares forfeited, and would place the value of the shares on that day to the credit of his account with the bank. The balance not having been paid, the directors passed a resolution declaring the shares to be cancelled and forfeited; and it appearing to them that the value of the shares on that day was 10,000*l.*, it was resolved that credit should be given to the proprietor for that amount in his account. A bill was filed to set aside the cancellation. From the evidence it appeared that the market price of shares on the day of the resolution slightly exceeded the price allowed by the directors; but that if the 1,000 shares had been carried into the market, the price would have been reduced greatly below the amount allowed by the directors. It was held, that the directors, placing themselves by the cancellation in the situation both of vendors and purchasers, were bound to allow the highest market price which could be obtained for the shares, without speculating on what might be the effect of throwing the 1,000 shares into the market, and the cancellation was declared to be void, and was set aside. *Stubbs v. Lister*, 1 Y. & Coll. N. C. 81.

Allotment of
new shares.

Where the calls on new shares allotted to trustees of a marriage settlement, in respect of original railway shares held by them upon the trusts of the settlement, had been paid out of the wife's separate income: it was held that stock purchased with the proceeds of the sale of such new shares was subject to the trusts of the settlement as corpus, and that the wife had a lien for the amount so paid for calls by analogy to the case of a tenant for life advancing money for fines payable on the renewal of leaseholds. *Rowley v. Unwin*, 2 Kay & J. 138.

3. Of Calls in respect of Shares.

As to calls after an order for winding-up a company, see *ante*, pp. 153—155.

Action for
calls.

A company which had obtained an act enabling it to sue and be sued in the name of one of the members as a nominal plaintiff, was afterwards registered and incorporated, pursuant to the act 19 & 20 Vict. c. 47 and 20 & 21 Vict. c. 14: it was held that the incorporated company could sue for calls previously made by the directors of such company. After an order for a voluntary winding-

up of a company, the liquidators appointed under 19 & 20 Vict. c. 47, may make calls without giving the notices prescribed by the provisions of the deed of settlement or acts for calls made by the directors. *Hull Flax and Cotton Mill Factory v. Wellesley*, 6 H. & N. 38.

To a declaration for calls by a railway company incorporated by a colonial legislature, setting out specifically and at length the acts empowering the company to sue, and the several facts showing the liability of the defendant as a shareholder, the plea of "never indebted" may be pleaded, and the court has no power to set aside such plea on the ground that it tends to embarrass the plaintiff by putting him to unnecessary, needless and expensive proof. *Welland Railway Company v. Blake*, 6 H. & N. 410; 30 L. J., Exch. 161; 9 W. R. 386.

In an action for calls where it was necessary to prove notice to the defendant of an alteration in the scheme, evidence that notices were sent by the post to all the names and addresses upon the list of allottees, which comprised the defendant's name, was held sufficient *prima facie* proof of the notice, but the defendant not having executed the deed was held not to be liable. *Carmarthen Railway Company v. Wright*, 1 F. & F. 282.

Sir John Romilly, M. R., laid down this general principle, where the interest of the testator in the subject-matter which he professes to bequeath is complete, or where it is so treated and considered by him and by all persons unconnected with it, as in the case of a share in an insurance company, the general calls fall on the legatee and not on the general personal estate, but where further payments are required to perfect the interest which the testator professes specifically to bequeath, then the general personal estate is applicable for that purpose. *Armstrong v. Burnett*, 20 Beav. 424, see p. 437.

Who liable to payment of calls after death of shareholder.

A banking company was established in 1836. By the deed of settlement 5*l.* per share was payable immediately, and the directors were empowered at any time to make a further call of 5*l.*, and on non-payment the shares might be forfeited. The shares were transferable, and on transfer the former proprietor was released. Legatees and executors might sell but were not to be members until a transfer to them, and until then were not entitled to the current dividends. The shareholders thereby covenanted to observe the clauses of the deed. A shareholder died in 1843, having specifically bequeathed his shares to infants. The executors in 1845 transferred the

shares into their own names, and they assented to the legacies. Afterwards, in 1848, the further call of 5*l.* per share was made: it was held that it was payable by the legatees and not out of the testator's residuary estate. *Armstrong v. Burnett*, 20 Beav. 424.

Where shares not fully paid up are specifically bequeathed, the question whether the specific legatee or the residuary estate is liable to the future instalments, depends upon whether the calls are actually made before the testator's death. A testatrix bequeathed shares in a banking company; before her death three calls were authorized at stated intervals, but the testatrix died before two of the periods: it was held, under the circumstances and from the practice of the company, that the calls were not to be considered as really made until a call letter had been sent to the shareholders, and as to those sent after the death of the testatrix, the specific legatee and not the residuary legatee must bear the calls. *Adams v. Ferich*, 26 Beav. 384.

Kindersley, V. C., said, the right principle is, that if any payments were necessary at the testator's death to constitute him a complete shareholder, they must be borne by his estate, but if he was a complete shareholder, all calls made after his death ought to be borne by the specific legatee. In this case the testator gave to his son any shares in railways, mines and other undertakings belonging to him at his decease. At the testator's death he had shares in the Ceylon Railway, upon which calls were made after his death. The railway not having been completed, the question was, whether the calls were to be paid by the legatee or out of the testator's estate, and the court decided that the legatee was liable. There being no words in the will to assist the construction. It is competent to a testator to indicate his intention by declaring either that the legatee shall or shall not bear the liability to future calls, and where such intention is declared it will be adopted by the court. *Day v. Day*, 1 Drew. & Sm. 261.

Meetings.

At an adjourned general meeting of the shareholders of a company, of which adjournment notice was given by circulars sent to the several shareholders, but not by advertisement as required by the deed of settlement, a proposition for a call was carried. A shareholder, who was present and voted at the adjourned meeting, cannot take advantage of the irregularity of the notice. It seems that if the shareholders had an effectual notice of the

meeting, the want of compliance with the provisions of the deed by advertisement would not invalidate the proceedings at a meeting. Where a deed of settlement provided that in every notice convening a general meeting of the shareholders, the object of the meeting should be specified. The transaction of business at such meeting foreign to the objects specified in the notice will not make the whole meeting irregular. *British Sugar Refining Company, ex parte Faris*, 3 K. & J. 408 ; 26 L. J., Ch. 369.

Where some of the clauses in a public company's deed of settlement were directory and others imperative, a direction in the former may be sanctioned and confirmed by a general meeting of shareholders, but the imperative clauses cannot without the consent of every individual shareholder. Absent members of a company were held to be affected by the information furnished by the directors at a general meeting and bound by the proceedings as to matters to which it was competent. *Ex parte Bignold*, 22 Beav. 143 ; 2 Jur. N. S. 940 ; 25 L. J., Ch. 601.

The balance order for payment of a call by a contributory is an enforcement of the former order, and requires no notice of it to be previously served according to universal practice. Service of the circular giving notice of a call by post prepaid is tantamount to personal service. Process under the balance order requires personal service, but where that is impossible, substituted service is the proper course upon a satisfactory proof that personal service cannot be effected. The practice under the Winding-up Act of 1848, s. 95, is the same as in a suit as to the consequences of process, but as to prior proceedings is governed by it. *Warwick and Worcester Railway Company, ex parte De Beauvoir*, 11 W. R. 321.

4. Of Dividends, Interest and Bonus in respect of Shares.

A shareholder died leaving shares in a company, the dividends upon which were declared half-yearly and made payable at a fixed period about a month afterwards. There was a further sum of money due to the shareholders in the company arising from profits upon the sale of shares: it was held, that the dividends upon the shares were apportionable under the 4 & 5 Will. 4, c. 22, payment to be calculated from the last day on which the

Apportionment of dividends.

dividend was made payable, and not the day on which it was declared ; but that the additional amount was not in the nature of a dividend, and therefore not apportionable under the act. *Hartley v. Allen*, 4 Jur. N. S. 500 ; 27 L. J., Ch. 621.

Where shares were settled on A. for life and then over, it was held, that a dividend declared before A.'s death, but not payable till afterwards, belonged to A.'s estate. *Wright v. Tuckett*, 1 Johns. & H. 266.

The decision in the following cases turned upon the peculiar wording of the deed of settlement. By the terms of the deed of settlement of the company their net profits were to be divided rateably to such an amount as should be declared at their half-yearly meeting, and were to be paid within twenty-one days afterwards ; and it was provided that the shareholder was not to receive any dividend after the period at which he ceased to be a proprietor of shares, but the dividends on such shares were to continue in suspense until some other person should have become proprietor of them. A shareholder died sixty-nine days after the half-yearly meeting at which a dividend was payable, having by his will bequeathed the interest and annual income arising from all his shares to one for life and then to others : it was held, that the dividend belonged to the legatee for life, and not to the general personal estate of the testator. *Clive v. Clive*, 1 Kay, 600 ; 23 L. J., Ch. 981.

In the case of a specific legacy of bank stock, if the testator has died a few days before the dividend day, the legatee would take the dividend although payable in respect of profits earned during the testator's life. *Ib.*

A testator bequeathed railway debentures to trustees to pay the interest to his children for life, and afterwards the capital was to go to his grand-children. The testator died in February, and the next half-year's payment of dividend upon the debentures was received in July following : it was held, that the debentures being in the nature of mortgages upon which the interest accrued *de die in diem*, the portion of the half-year's dividend due up to the testator's death was to be considered as capital, and not income as between the tenants for life and remainderman. *Re Rogers*, 1 Drew. & Sm. 338 ; 6 Jur. N. S. 1363 ; 30 L. J., Ch. 153.

In the case of a similar bequest of shares in a company, and the death of the testator a few days before a dividend upon them is declared, the whole of such dividend

belongs to the tenant for life. *Bates v. Mackinley*, 8 Jur. N. S. 299; *Clive v. Clive*, Kay, 600.

The principle as to bonus is, that if the bonus was declared as such out of profits, it might be either out of that actual half-year or of that half-year and the accumulations of the last seven or ten years, and it could be made a matter of calculation as to how much accrued during the lives of particular persons. But where a banking company, out of the net profits of the half-year, declare and pay a dividend at a certain rate per cent., and pay a sum of money on each share, calling it a bonus, the bonus is to be considered income and not capital as between the tenant for life and the remainderman. *Plumbe v. Nield*, 6 Jur. N. S. 529.

Right to bonus in respect of shares.

A testator died possessed of shares in a foreign adventure. Subsequently dividends were declared upon profits made previously to his death: and it was held they were income and belonged to the tenants for life of the shares under his will. The testator was one of a body of shareholders who on the formation of a company stipulated for a bonus for their exclusive benefit; they afterwards in the lifetime of the testator relinquished it for a fixed payment per share. It was held that payments made to the executors in pursuance of the arrangement which was completed after the death of the testator, formed a part of the capital of the testator's estate. If shares in a foreign adventure are bequeathed to trustees, the court, unless asked to change the investment, will make no order as to the continuance of the shares as an investment. *Bates v. Mackinley*, 31 L. J., Ch. 389.

Where a bank carries on business and there is a considerable accumulation of profits to be divided, not merely as income of any particular half-year, but forming part of the capital, so that any part cannot be carried back and attributed to each preceding half-year, then the following authorities apply. *Plumbe v. Meld*, 6 Jur. N. S. 529; see *Paris v. Paris*, 10 Ves. 190, in which a division of money among the proprietors of bank stock beyond the usual dividend was considered as capital not belonging absolutely to the tenant for life; *Witts v. Steere*, 13 Ves. 363; *Ward v. Coomb*, 7 Sim. 634; *Cumming v. Boswell*, 2 Jur. N. S. 1005; *Price v. Anderson*, 15 Sim. 473; *Preston v. Melville*, 16 Sim. 163.

A manager of a chartered company made a specific bequest of ten shares to his son; after the testator's death a large sum was recovered by the company from his estate

under a compromise sanctioned by the court in respect of the testator's defalcations. The company having declared a large bonus thereout, it was decided by the Court of Appeal, overruling the decision of the Master of the Rolls, that such bonus was payable to the specific legatee of the shares. *Maclaren v. Stainton*, 7 Jur. N. S. 691; 27 Beav. 460.

A testator bequeathed the dividends, interest and proceeds of stock in a company to a party for life. At a meeting of the company held in the testator's lifetime a resolution was passed declaring a bonus on each share, payable on a day subsequent to the testator's death. The bonuses arose from a sum which had been paid to the company on the compromise of a suit: it was held, that the bonuses formed part of the testator's general estate. *Lock v. Venables*, 27 Beav. 598; 6 Jur. N. S. 238; 29 L. J., Ch. 179.

Priority as
to dividend
on preference
shares.

The stock in the Great Northern Railway Company consisted of ordinary and preference stock, the latter being created in pursuance of different acts of parliament, and entitling the holders to preference dividends at different rates per cent. per annum. An officer of the company, from time to time during a period of some years, fraudulently issued fictitious stock of both kinds, which amounted in the whole to 220,000*l.* before the fraud was discovered. It not being possible to distinguish the genuine from the fictitious stock, an act of parliament was obtained in 1857, by which the fictitious stock was declared valid, and it was enacted, that the directors should apply a sum of 243,000*l.*, which was applicable for profits up to December, 1856, in purchasing and cancelling stock equivalent to that which had been fraudulently created. It was then enacted, that it should be lawful for the directors to apply the balance of that 243,000*l.*, so far as the same would extend, in paying to the proprietors of the several classes of preference stock or shares the dividends to which they would have been entitled out of the said sum if the same had been declared and apportioned as dividends, &c. The preference shareholders not having received the full amount of their dividends in 1856, claimed to be paid the deficiency out of the first half-year's profits in 1857; but this claim was resisted by the directors and the ordinary shareholders, and thereupon a bill was filed to obtain an injunction to restrain the declaration of a dividend on the ordinary stock, without regard to the prior right of the preference shareholders to be paid the full amount of their dividend,

to be computed from June, 1856. The court of appeal held, in affirmance of the decision of V.-C. Wood, that the preference shareholders were entitled to the injunction, it being considered that the right of the preference shareholders was to have the full amount of their respective dividends before any payment in respect of dividends on the ordinary stock, and that the Act of 1857 had not deprived them of that right. *Henry v. Great Northern Railway Company*, 27 L. J., Ch. 1; 3 Jur. N. S. 1133; 1 De G. & J. 606.

Where a person acquires, as holder of guaranteed shares in a railway company, a right with regard to payment out of profits, to a dividend which is in fact a fixed payment of so much per cent. upon the shares, then such dividend is in the nature of interest chargeable upon profits. *Matthews v. Great Northern Railway Company*, 5 Jur. N. S. 284; 28 L. J., Ch. 376.

The directors of a banking company, under powers conferred by the deed of settlement, from a reserve fund and issuing shares at a premium of 5*l.* per share, credited the shareholders with 2*l.* per share, thereby increasing the amount of paid-up capital by that sum per share. A large deficit was discovered by reason of an extensive fraud of an officer, and the directors proposed to write back the surplus and reserve fund so capitalised to meet the deficiency, and that was adopted at a general meeting, and a dividend was declared to be paid on a fixed day. F., a shareholder, who was not present at the meeting, filed a bill against the directors, the company and A., a single shareholder, who held shares jointly with him, to restrain payment of the dividend declared, and of any other dividends except out of profits, and from encumbering the capital with any sum otherwise than as it was liable to the debts of the bank. A motion for an injunction in these terms was refused as to the dividend declared; but granted as to future dividends. *Fawcett v. Laurie*, 8 W. R. 699.

Preference shareholders are entitled to arrears of dividends out of future profits, but without interest on the arrears, and such right must prevail against shareholders over whom they have been preferred. *Corry v. Londonderry and Enniskillen Railway Company*, 7 Jur. N. S. 508; 30 L. J., Ch. 290; 9 W. R. 301. Where a dividend on the stock of a public company has already been declared, no one shareholder can restrain the payment of the dividend without making the other shareholders parties. *Fawcett v. Laurie*, 7 Jur. N. S. 61—V.-C. K.

Dividends
and interest.

A waterworks act provided that a *maximum* dividend of 10*l.* per cent. should be paid on the nominal amount of the shares; and also that when the *maximum* dividend was paid, including the deficiency of dividend in any past years, and a contingent fund should have been provided, the price of water should be reduced. An amendment act was afterwards passed, which, after reciting the previous act and the provisions for the payment of a *maximum* dividend, of 10*l.* per cent., provided that the nominal value of the shares should be doubled, that the rate of dividends should not exceed 5*l.* per cent. upon the nominal amount of the shares, and that the proprietors of shares under the former act should be entitled to an equal number of shares under the second act, and that each new share should be vested with all the rights acquired under the former act in respect of the same, so far as such rights were not inconsistent with the provisions of the second act. At the time of the passing of the second act considerable arrears were due in respect of dividends on the shares payable under the first act; it was held, that the surplus income of the company was applicable to the payment of these arrears in priority to the arrears which had accrued since the passing of the second act, and before any claim could be made for a reduction in the price of the water as provided by the first act. *Coates v. Nottingham Waterworks Company*, 7 Jur. N. S. 799; 9 W. R. 799.

Under the Canadian statutes, 12 Vict. c. 29; 18 Vict. c. 174, and 19 & 20 Vict. c. 111, the preference bondholders of the Grand Trunk Railway Company are in the position of preferred creditors, having a lien on the road and all the works and property of the railway. *Herrich v. Grand Trunk Railway Company*, 7 U. C. L. J. 240. The bondholders can institute a suit in equity to restrain the directors from applying the earnings of the railway in any other way than in the order appointed by the acts. *Ib.* The bondholders having a lien are not obliged to submit to payment of past debts which the directors have neglected to pay. *Ib.*

5. Of the Bequest of Shares.

Shares in an incorporated company are not an interest in land within the 9 Geo. 2, c. 36, although the act of parliament by which the company is incorporated does not contain a clause declaring the shares to be personal

estate. *Edwards v. Hall*, 6 De G., M. & G. 74; 1 Jur. N. S. 1189; 25 L. J., Ch. 82.

Where land is purchased and held by a public company for the purposes of trade, it is a settled principle that the interest which a shareholder of the company possesses in the land is not within the operation of the 9 Geo. 2, c. 36. *Taylor v. Linley*, 27 Beav. 218; 2 De G., F. & J. 501; 5 Jur. N. S. 701; *nom. Linley v. Taylor*, 1 Giff. 67; 28 L. J., Ch. 686. Where a trading company which holds land has demised such land to another trading company, the rule is the same. *Ib.* A railway company demised their line of railway, and all the property and effects pertaining thereto, to another railway company: it was held, that the shares in the railway company and the money arising out of the dividends payable upon those shares might be bequeathed by will for charitable purposes. *Ib.* Shares in a foreign mining company have been held not to be within the 9 Geo. 2, c. 36. *Baker v. Sutton*, 1 Keen, 234. But a bequest of shares in an iron company, a partnership not incorporated, formed for working mines, which possessed freehold and other estates of considerable extent and value, and derived large profits from letting a portion of the same, was held to be void under the 9 Geo. 2, c. 36. *Morris v. Glynn*, 27 Beav. 218; 5 Jur. N. S. 1047.

Shares in mining companies conducted on the cost-book principle are not within 9 Geo. 2, c. 36, where the mines were vested in trustees for the purposes of the undertaking generally, and not in trust for the individual shareholders, and the interest of the shareholders was limited to the profits derived from the working the mines; for no individual adventurer could call for any part of the soil or anything more than his share when realized. *Wood, V.-C.*, would have decided otherwise if the mine had been vested in the purser or any other person in trust, not for the purposes of the undertaking generally, but for the individual adventurers in proportion to their shares. *Hayter v. Tucker*, 4 Kay & J. 243; 4 Jur. N. S. 257.

Shares in a banking company, purchased by executors with the assets of their testator in the name of a party who was entitled to the dividends for life, are included in the probate stamp, and do not require to be covered by the stamp upon the letters of administration granted to the estate and effects of the party in whose name the purchase was made. If the bankers refuse to transfer

the shares after an affidavit made by the testator's executor in conformity with the stat. 48 Geo. 3, c. 149, they do so at the peril of costs. *Hennell v. Strong*, 25 L. J., Ch. 407. As to exemption of trust property, see Shelford's Probate, &c., Duties, pp. 126—133, 2nd ed.

II. OF DIRECTORS.

Directors
considered as
trustees.

Wherever a person is concerned in a transaction in the confidential relation of agent for another he shall not be allowed to take advantage of his situation in order to obtain a personal benefit to himself; and wherever he does obtain such a benefit he will be liable to account for it strictly to his employer. *Carter v. Horne*, 1 Eq. Abr. 7; *Fawcett v. Whitehouse*, 1 Russ. & M. 132; see *Gillett v. Peppercorn*, 3 Beav. 78; see *Tyrrell v. Bank of London*, 31 L. J., Ch. 369; 8 Jur. N. S. 849.

Committee-men or directors are properly the agents of those who employ them and who empower them to direct and superintend the affairs of the corporation. *Charitable Corporation v. Sutton*, 2 Atk. 404. The employment of a director is of a mixed nature, partaking of the nature of a public office when it arises under an act of parliament or by charter of the crown. If some directors are guilty of a gross non-attendance and leave the management entirely to others, they may be guilty by these means of the breaches of trust which are committed by others. By accepting a trust of this sort a person is obliged to execute it with fidelity and reasonable diligence, and it is no excuse that they had no benefit from it, and that it was merely honorary, and therefore they are within the rule as to common trustees, who are bound to perform a trust which they have undertaken. Supine and gross negligence of duty will amount to a breach of trust. *Charitable Corporation v. Sutton*, 2 Atk. 400; see *Cogg v. Bernard*, 1 Salk. 26.

Directors to whom exclusively the entire management of a company is entrusted, and who receive a remuneration for their trouble out of the funds of the company, are under an obligation to the shareholders at large to use their best exertions in all matters which relate to the affairs of the company, for the welfare of the concern thus entrusted, not gratuitously, to their charge. Without any special provision for the purpose, it is by law an implied and inherent term in the engagement that they shall not make any other profit to themselves of that trust or

employment, and shall not acquire to themselves, while they remain directors, an interest adverse to their duty. *Benson v. Heathorn*, 1 Y. & Coll. C. C. 326; *York and North Midland Railway Company v. Hudson*, 16 Beav. 495; 22 L. J., Ch. 529; *Hudson v. Same Co.*, 18 Beav. 70.

The directors of a company are trustees and have attached to them for the benefit of the shareholders all the liabilities and duties which attach to a trustee or agent, if therefore a director enters into a contract for the company, he can derive no personal benefit from it. *Great Luxembourg Railway Company v. Magnay*, 4 Jur. N. S. 839.

A railway company furnished a director with a large sum of money to enable him to purchase the concession of another line. He purchased it, as it turned out, from himself, he being the concealed owner of it: it was held that the transaction could not stand, but that the company must adopt or repudiate the transaction altogether. *Ib.*

The company having sold the concession, pending a suit impeaching the transaction: it was held also, that they could have no relief, either as to the application of the money or otherwise. *Ib.*

Directors are the servants not of the individual shareholders but of the company; and if a shareholder is aggrieved by their misconduct, his course is to call upon the company to bring the directors to account, and having done that then to get relief from the company itself. *Orr v. Glasgow, Airdrie and Monklands Junction Railway Company*, 6 Jur. N. S. 877; 8 W. R. 643, H. L.

It was questioned how far directors can be regarded as the agents of a company for the purpose of making false representations, by which the shareholders or the public are deceived. *Re Hull and London Life Assurance Company, ex parte Gibson*, 2 De G. & J. 275; 4 Jur. N. S. 1005.

The managing committee of a projected railway company as well as the directors, after its formation, are not merely the agents of the shareholders but their trustees, and are liable to account as such. *Williams v. Page*, 24 Beav. 654; 4 Jur. N. S. 102; 27 L. J., Chan. 425.

When the managing committee of an abortive company have rendered their accounts and divided the money in their hands without comment or remonstrance on the part of the shareholders, the court would not, three or four years afterwards, decree an account against them. *Ib.*

Directors of a company, on the transfer of its business

to another company, received from the latter a large sum for compensation, the particulars of which they withheld from their members: it was held that they were trustees of the money for the members, and they were ordered on an interlocutory application to pay it into court. *Gaskell v. Chambers*, 26 Beav. 360.

A bill by a company alleged that a defendant had agreed to accept shares. The articles of association were silent as to the mode of acceptance, and the act 19 & 20 Vict. c. 47, s. 9 and schedule B. applied (see *ante*, p. 356), by which the acceptance must be in writing and signed by the applicant. The defendant had never signed an acceptance. This fact and the statute were set up by plea: it was held, first, that the plea was bad in form, as it raised no fact not raised by the bill. *New Brunswick and Canada Railway and Land Company v. Muggeridge*, 4 Drew. 686. Secondly, that the agreement was good to do that which the statute required. *Ib.* And that the decree would not be nugatory, as in a joint stock partnership, a partner cannot put an end to the partnership but only to his own quality of shareholder; he must remain shareholder or constitute another person shareholder in his place. *Ib.*

The directors of a loan company were empowered to borrow money, but directors who were "concerned in or participated in the profits of a contract with the company," vacated their offices. The chairman lent money to the company at high interest, which was afterwards lent out at a profit: it was held, that the loan was not warranted by the rules. Discounting the bills of a director is a lending of money within a clause prohibiting loans to shareholders. *Bluck v. Mallalue*, 27 Beav. 398; 5 Jur. N. S. 1018.

A contract made between the projector and the directors of a joint stock company provisionally registered, but not in terms made conditional on the completion of the company, is not binding upon the company, which is subsequently completely registered, although confirmed by the deed of settlement. *Gunn v. London and Lancashire Assurance Company*, 12 C. B., N. S. 694; *Hutchinson v. Surrey Consumers' Gas Company*, 11 C. B. 689; *Payne v. New South Wales Coal and International Steam Navigation Company*, 10 Exch. 283.

The original promoters of a railway project have no power to bind the corporation ultimately constituted by the act of parliament. The corporation so constituted, though owing its existence to the exertions of the pro-

moters, is not bound to fulfil their contracts. The promoters are not agents by anticipation of the corporation. Anterior engagements can only bind the corporation when incorporated in their act, or when deliberately adopted by them. *Caledonian and Dumbartonshire Railway Company v. Magistrates of Helensburg*, 2 Macq. H. L. 391.

A company, having no power to lend, lent money to another company which had no power to borrow, the borrowers being aware of such facts. The borrowers purchased a canal with the money, and such purchase was afterwards set aside with an order to refund the purchase-money. A decree was made in favour of the lending company for repayment, with interest, of the balance due to them on the original loan out of the purchase-money, which had been refunded. *Ernest v. Croysdill*, 6 Jur. N. S. 740; 29 L. J., Ch. 580.

The capital of a company was fixed at 10,000*l.*, with power for a general meeting of the shareholders duly convened according to certain forms, and by a majority of two-thirds of the then shareholders, to increase that amount to 100,000*l.* No such meeting was held, but a false entry was made by the chairman in the minute-book of the company, stating that at an extraordinary general meeting of the company it had been resolved to increase the capital from 10,000*l.* to 100,000*l.* The capital having been *de facto* increased, new shares having been issued and taken, profits having been made upon the increased capital and dividends paid on such profits among all the shareholders for four years: it was held that the shareholders must be taken to have acquiesced and could not then object to the irregular manner in which the shares had been increased. *Re Richmond, Re Painter*, 4 Kay & J. 305; see *Lawes's Case*, 1 De G., M. & G. 443; *Morgan's Case*, 1 De G. & S. 750.

Acquiescence of shareholders.

Where a director of a public company availing himself of his position obtains a private advantage by transactions with the company, the company cannot afterwards repudiate those transactions, when they have by their conduct, with a knowledge of the transactions, put it out of their power to restore all parties to their original position. *Great Luxembourg Railway Company v. Maginay*, 4 Jur. N. S. 839.

Power of directors to bind shareholders.

Where contractors for the works of a railway company agreed to accept preference shares in the company in part payment, upon the faith of representations made by the directors (who were acting *ultra vires*) that only 3*l.* per

* share would be called up, or that if more than 3*l.* should be called up they would receive payment of the additional amount in preference shares, or exchange the 3*l.* for paid-up shares, and the company afterwards refused to comply with these terms: it was held that there was no equitable relief against the directors personally, either by way of specific performance or on the misrepresentations, but that the remedy, if any, was by an action for damages. *Ellis v. Colman*, 4 Jur. N. S. 350; 27 L. J., Chan. 611.

Seven individuals associated themselves together for the formation and working of a mine, upon the cost-book principle, and issued a prospectus describing the company as having a capital of 12,000*l.*, in 12,000 shares of 1*l.* each, to be paid upon allotment; and setting forth the reports of the mining captain that the mine was in full operation, and stating that the money was to be paid to L. & Co., the bankers of the company. The plaintiff applied for and obtained an allotment of fifty shares, and paid 50*l.* to L. & Co., who gave him a receipt, describing that sum as having been received by them for the company. The plaintiff having afterwards discovered that not more than 1,435 shares had ever been subscribed for or paid upon, brought an action against the directors to recover back his deposit, on the ground of failure of consideration: it was held (affirming the judgment of the Common Pleas), that all the directors were liable, notwithstanding the account at the bankers was kept in the names of five of them only, for the entry of the receipt of money to an account of the particular directors could not affect the right of those making the payment. *Johnson v. Goslett*, 3 C. B., N. S. 569; 4 Jur. N. S. 50; 27 L. J., C. P. 122, Exch. Cham.

Such directors of an insurance company as had declared a dividend which was not warranted by the state of the funds of the society, were held to be liable to make good the amount of the dividend. The directors who had bought a number of shares with the funds of the society, were held to be liable for the amount so applied, such a dealing with the funds being altogether at variance with the scope of the deed of settlement. *Evans v. Coventry*, 2 Jur. N. S. 557; 25 L. J., Ch. 489; see also 19 & 20 Vict. c. 47, s. 14.

The deed of settlement of a company provided for the transfer of shares, with the approbation of the directors. Some of the shareholders threatened to take proceedings to set aside a purchase and lease for fraud, whereupon the directors agreed with them that they should be allowed

to transfer their shares on payment to the company of a sum, out of which a claim of one of the directors against the company should be satisfied. The money was paid, and the claim satisfied out of it, and the shares transferred to nominees of the directors for a nominal consideration: it was held, that the transaction was inconsistent with the duty and beyond the power of the directors, and that the shareholders were, notwithstanding the transfer, properly placed on the list of contributories. *Bennett's Case*, 5 De G., M. & G. 284; 24 L. J., Ch. 130.

Although the majority of the partners of a company may bind the minority upon every point which the deed authorizes by their common contract, yet they have no authority whatever to bind the minority on any matter which is not within the common contract. Under the deed, which is the origin of the company, certain persons came in and are shareholders, whether originally or by purchase is not very material, whereby they take on themselves the liabilities of the company. Such deed is equally binding on those who sign the deed and upon those who become shareholders with them.

Power of majority to bind minority.

In pursuance of a resolution passed at an extraordinary general meeting of an unincorporated company, a shareholder sold his shares to the directors, upon the terms that he should withdraw from the company and be no longer liable to any debts of the company. No power to enter into such an arrangement was contained in the deed of settlement of the company: it was held, that the shareholder was still liable to the debts of the company, and was properly included in the list of contributories under the Joint Stock Companies Winding-up Act, 1848. *Ex parte Morgan, Re Vale of Neath and South Wales Brewery Joint Stock Company*, 1 H. & T. 320; 1 Mac. & G. 225.

By the deed of settlement of a company its directors had the power of purchasing on behalf of the company shares in the capital of the company, when there should be a surplus fund of 10,000*l.*, and there was no prohibitory clause in the deed restricting the purchase under other circumstances. The deed provided the mode by which a shareholder parting with his shares was to be relieved from subsequent responsibility. The deed also contained clauses regulating the mode of convening extraordinary and general meetings, and provided that, where an extraordinary meeting was to be convened, notice should be given of the specific object of

the meeting to each shareholder. The company being in insolvent circumstances, an extraordinary meeting was held and a resolution passed, the purport of which had not been previously notified, authorizing the directors to purchase, within three months, the shares of any member who was desirous of retiring from the company, who would lend to the company a sum equal to the purchase-money. After the expiration of the three months a general meeting of the company was held, at which the directors were authorized to allow such further time as they might think reasonable, to those shareholders who had not complied with the resolution of the extraordinary meeting, and the forfeiture of the shares of those proprietors who should continue to be defaulters was sanctioned. Acting on the resolution of the general meeting, W. L. sold his shares to one of the directors on behalf of the company, and lent a sum equivalent to the purchase-money, receiving the loan note of the company. Having died before the transfer of the shares was effected with all the formalities prescribed by the deed, the company, at the instance of his executor, completed the transfer by the execution of those formalities: it was held, first, that the resolution of the extraordinary general meeting being invalid, was incapable of being ratified by the general meeting, whose powers were limited to acts not contrary to the deed; and secondly, that the resolution of the general meeting in terms applying only to defaulters, could not be construed to extend to the privilege of retiring from the partnership which had expired by lapse of time; and thirdly, that the master, acting under an order for winding-up the company, had rightly included the executor in the list of contributories, without qualification. *Vale of Neath and South Wales Brewery Joint Stock Company, Lawes's Case*, 1 De G., M. & G. 421. The Lord Chancellor said, the partnership being in the nature of a joint stock company, and its deed of constitution containing, among others, special provisions with respect to general and extraordinary meetings, it is especially necessary to hold its members as strictly as may be to the very letter of their contracts with each other, for otherwise, when it is proposed to deal with the affairs of the company in pursuance of resolutions passed at such general or extraordinary meetings, many of the partners, who may be either unable or unwilling to attend, may find themselves bound by proceedings which have taken place at such meetings, though directly opposed to the

terms on which they have entered into the partnership. *Ib.* pp. 429, 430.

A registered insurance company agreed to sell its business to another registered insurance company, and a deed of assignment was accordingly executed, whereby the latter company covenanted to indemnify the former against all claims. After the business had been carried on for some time by the purchasing company that company failed, and both companies were wound-up. On the official manager of the selling company tendering a proof against the purchasing company in respect of claims satisfied by the selling company, one part of the deed of assignment was produced, having affixed to it the seal of the purchasing company; but another part, alleged to have been executed by the selling company, was not forthcoming: it was held, first, that after what had taken place, it was necessary to determine whether the selling company had executed the purchase-deed, or whether its directors had exceeded their powers in making the sale. *Port of London Shipowners Loan and Assurance Company's Case*, 5 De G., M. & G. 465. It was held, secondly, that where a purchaser has enjoyed the subject matter of a contract, every presumption must be made in favour of its validity. *Ib.* It was held, thirdly, that if all the proceedings on the part of the directors of the purchasing company with reference to the purchase had not been in strict accordance with their own deed, still if the contract with the other company was the means of the purchasing company coming into existence, they could not act in contravention of that contract. *Ib.*

Where by a deed of settlement of a company no express power is given to the directors for the purpose, it is not competent for them to amalgamate with another company carrying on the same business, and to assume, on behalf of their own company, the debts and responsibilities of the other. *Re Era Insurance Society*, 30 L. J., Ch. 137. A clause in a deed of settlement is not sufficient authority for the above purpose, which authorized the directors generally, where the deed of settlement was silent or did not otherwise provide, to act in the direction of the concerns of the society in such manner as at their absolute discretion they shall think most conducive to the interest of the society. *Ib.* See *ante*, p. 117.

The member of a life insurance society, which by agreement had been amalgamated with an insurance company, filed a bill alleging that the directors of the

Amalgamating.

merged company had received compensation-money unknown to the plaintiff and other members, and praying that the defendants as trustees might refund such money. The defendants by their answer admitted the receipt of the money, but alleged that the members had confirmed the arrangement for compensation. The defendants were held to be trustees, and were ordered to pay the sums of money received by them into court. *Grashell v. Chambers*, 5 Jur. N. S. 52.

Directors will not be allowed to purchase the debt of a creditor, and then sue a single unwilling shareholder in his name so as to enforce contribution. *Beck v. Dean*, 3 Jur. N. S. 14.

A transfer of all shares in a company by a retiring director to the continuing directors is invalid, and will not relieve the retiring director from his liabilities as a shareholder even in respect of shares allotted to him for services performed on behalf of the company, and accepted only as shares on which no call was to be made. *Daniell's Case*, 3 Jur. N. S. 803 ; 26 L. J., Ch. 563 ; 22 Beav. 43.

The directors of a company cannot allot shares in a company irrespective of the liabilities attaching to them. *Ib.*

On the retirement of S., a director of a banking company, the board of directors passed a resolution to take back his shares at par, and that he should retire and be indemnified in a form thereafter to be prepared. The company was subsequently ordered to be wound up, and the court decided that the transactions on the retirement of S. were invalid and that he was a contributory. Before the winding-up W., another director, had paid money to satisfy the claims of creditors, and the master made a call upon all the contributories for the payment of this money to the creditor of W. : it was held, that the retirement and cancellation of his shares having been declared invalid, S. was not entitled to any indemnity and must contribute towards the call. *Ex parte Walker*, 2 Jur. N. S. 1216 ; 26 L. J., Ch. 261.

A contract *ultra vires* into which directors have entered and which was not binding on the company can be neither specifically performed nor can the court order the company to make good their representation. *Ellis v. Colman*, 25 Beav. 662 ; 4 Jur. N. S. 350 ; 27 L. J., Ch. 611.

Notice.

Notice to one of the directors of a bank of a prior un-

registered deed, is not notice to the board of directors so as to bind the shareholders where such director has not communicated his knowledge and the existence of the prior unregistered deed has been fraudulently concealed, such director being a party to the fraud. *Re Burmester*, 9 Ir. Ch. Rep. 41.

The directors of a shipping company, with limited liability, having power by the company's articles of association to do all such acts as the company might do, not being acts which the 19 & 20 Vict. c. 47, or the company's articles of association required to be done by the company in general meeting, have power to borrow money for the purposes of the company by mortgaging the company's ships. *Australian Auxiliary Steam Clipper Company v. Mounsey*, 4 K. & J. 733; 4 Jur. N. S. 1224; 27 L. J., Ch. 729.

At a meeting of a company, regularly convened, resolutions were passed removing certain directors for misconduct; the deed of the company providing that such a meeting might remove any director for "negligence, misconduct in office, or any other reasonable cause." Other directors were subsequently elected in their place. A bill was then filed by the removed directors to set aside the proceedings of the meeting and the election of the new directors: it was held, on a motion for an injunction to restrain the new directors from acting, that the expression "reasonable cause" in the company's deed, did not refer to such a cause as in a court of justice would be held reasonable, but only to such a cause as should be deemed reasonable by the shareholders assembled at a meeting duly convened: and therefore that the court had no jurisdiction to interfere, nor where no case of direct fraud was proved, to determine whether the decision of the meeting had or had not been unduly influenced by unfounded statements, made by persons taking an active part in the proceedings. *Inderwick v. Snell*, 2 Mac. & G. 216; 2 Hall & T. 412; 14 Jur. 727; 19 L. J., Ch. 542.

Removal of directors.

A company was incorporated by the registration of a memorandum of association under the 19 & 20 Vict. c. 47, but no articles of association were executed. Before the first general meeting the subscribers of the memorandum of association, acting as directors of the company, appointed one of their number manager of the mine at a salary: it was held that, under the provisions contained in table B. the subscribers of the memorandum of associ-

Appointment of officers.

ation as directors had power to make the appointment, and that it was not illegal either at common law or otherwise. *Eales v. Cumberland Lead Mining Company*, 6 H. & N. 481; 7 Jur. N. S. 169.

A person employed by directors of a company is not bound to inquire whether they are acting within the limits of their power. *Green v. Nixon*, 22 Beav. 530; 3 Jur. N. S. 993.

Secretary.

The secretary of a company is not authorized to admit the receipt of a letter to him on behalf of the company. *Bruff v. Great Northern Railway Company*, 1 F. & F. 344—Willes.

The provision in the 7 & 8 Vict. c. 113, "that the deed of partnership of every banking company to be established under that act shall contain a specific provision for the retirement of at least one-fourth of the directors yearly, and for preventing the re-election of the retiring directors for at least twelve calendar months," has been repealed by 19 & 20 Vict. c. 100, which enacts as follows, (that is to say,)

Retiring directors eligible for re-election.

It shall not be necessary in the deed of partnership of any banking company established after the 29th July, 1856, to insert any provision for preventing the re-election of retiring directors either absolutely or for any limited period. 19 & 20 Vict. c. 100, s. 1.

Provision for existing banking companies established under recited act.

2. In every banking company already established under the provisions of the act 7 & 8 Vict. c. 113, and whose deed of partnership or settlement contains a provision in accordance with the enactment hereinbefore repealed, the directors retiring at any general meeting after the 29th July, 1856, shall and may, if duly qualified in other respects, be immediately eligible for re-election, anything in the deed of partnership of such company contained to the contrary notwithstanding. *Ib.* s. 2.

Spiritual persons not to act as directors.

No copartnership or association is rendered illegal by reason of spiritual persons being members thereof; but it is made unlawful for any spiritual person holding any cathedral preferment, benefice, curacy, a lectureship, or who shall be licensed or allowed to perform the duties of any ecclesiastical office, to act as a director or managing partner, or to carry on the business of banking and other trades for gain and profit. 4 Vict. c. 14.

III. OF PROCEEDINGS AT LAW AND IN EQUITY BY AND AGAINST COMPANIES.

Suits by one or more shareholders on behalf of themselves and all the other shareholders of a company or corporation except the defendants have been of frequent occurrence. *Colman v. Eastern Counties Railway Company*, 10 Beav. 1; *Simpson v. Denison*, 10 Hare, 51; *Ffooks v. London and South Western Railway Company*, 1 Sm. & Giff. 142; 17 Jur. 365.

Suits by some or behalf of all shareholders.

A suit by a shareholder of a company on behalf of himself and all other the shareholders thereof, except such as are defendants, against the company and other shareholders and directors, may be sustained, although no other shareholder may wish to sue. *Burt v. British Nation Life Insurance Association*, 5 Jur. N. S. 612; 25 L. J., Chanc. 731—L. J. Where a shareholder suing in the manner last stated has precluded himself by his conduct from any right of complaint in respect of the matters mentioned in his bill, the circumstance of there being other shareholders who have a right of complaint in respect of the same matters will not give him a title to sue for them. *Ib.*

A bill filed by shareholders in a company against directors alleged that the directors had purchased shares from the chairman, and that such purchase was a fraud upon the plaintiffs and the other shareholders, and not authorized by the constitution of the company, or by the provisions of its deed of settlement, which, so far as it was set out in the bill, did not provide any remedy in such a case: it was held, that the bill showed a good cause of suit, and a demurrer was overruled. *Hodghinson v. National Live Stock Insurance Company*, 4 De G. & J. 422. Where there was an allegation in the bill that certain shareholders had paid a call, but that the plaintiffs were ignorant of the names of such shareholders: it was held, that it was not demurrable for not making any of them parties. *Ib.*

Parties.

Where a company had entered into and acted upon an agreement with other companies, which was alleged to be *ultra vires*, it was held, that all the companies were necessary parties to a bill by a shareholder of the first company, praying that the agreement might be declared invalid, and that the company might be restrained from acting upon it. *Hare v. London and North Western Railway Company*, 1 Johns. & H. 252; 9 W. R. 33.

Suit barred
by acqui-
escence.

After an account regularly stated by the directors of an abortive railway company, and approved at a public general meeting convened on due notice, followed by payment to the majority of shareholders, who approved the account, a bill by one shareholder on behalf of himself and others, filed after three years' acquiescence, was dismissed with costs, no fraud or error in the account being proved. *Stupart v. Arrowsmith*, 3 Sm. & G. 176; see *Williams v. Salmond*, 2 K. & J. 463; 2 Jur. N. S. 551.

Suit against
provisional
committee
to account.

The defendants were the provisional committee of an abortive railway scheme, which was projected in 1845. The plaintiffs were two of the shareholders, holding 100 shares each in the company suing on behalf of themselves and all the other shareholders except the defendants. The bill charged that the defendants had repaid 9,975*l.*, which had been paid by way of deposit upon shares taken by eleven of the provisional committee and three other shareholders, to enable the company to comply with the standing orders of the house of lords, and that they had distributed the balance among the general body of shareholders, making a dividend of only 20*l.* per cent. No account of receipts and disbursements was rendered by the committee. The shareholders, at a meeting held for the purpose, had authorized the committee to proceed with the bill on the faith of a report which had been circulated among the shareholders, in which the 9,975*l.* appeared as assets of the company. The bill in parliament was thrown out in 1846. The suit was instituted in 1853. The bill prayed an account of the receipts and disbursements of the company: it was held, first, that the provisional committee were in the position of trustees, and that under the circumstances, lapse of time was no bar to the relief sought. *Williams v. Page*, 24 Beav. 654; 4 Jur. N. S. 102; 27 L. J., Chanc. 425. Secondly, that the suit was not defective by reason of two of the committee, who were originally made parties to the suit, having been dismissed, the evidence showing that they were no parties to or had in any way sanctioned the repayment of the 9,975*l.* *Ib.* Thirdly, that there was no misjoinder of plaintiffs from the fact that one of them had received the dividend which had been paid by the committee, and the other had not. *Ib.* Fourthly, that the three shareholders not committeemen who had been repaid their deposits in full ought to have been made parties. *Ib.*

The bill was dismissed with costs against such of the defendants as had not been members of the committee when the repayment of the 9,975*l.* was made, or in any way sanctioned it, although they had been added as parties on the answers of the original defendants coming in, by which they insisted that they were necessary parties to the suit. *Ib.*

A company was formed on the cost-book system for collecting and raising gold in Australia, the nominal capital of which was 100,000*l.*, in shares of 1*l.* each. A prospectus was issued, by which it was stated that unless adequate capital was subscribed all monies received for shares should be returned without deduction. The certificates of the shares issued by the company represented that the holder having paid 20*l.* was entitled to twenty shares in the company. The necessary amount of capital was not subscribed. The plaintiff, a sharebroker, lent to M., as the agent of the company, 500*l.* on the security of 1,000 shares, and also purchased, on account of the company, 1,200 shares for the purpose of enabling the company to obtain a settling day on the stock exchange. These 1,000 shares had been issued by the company to M. on account of the engineer and another party. The scheme having failed, the plaintiff filed a bill against the committee of management, by which he prayed for a declaration that the loan of 500*l.* was obtained from him, and that he was induced to purchase the shares, by fraud, that the company might be decreed to repay the 500*l.* with interest, and the purchase-monies paid by him for the shares: it was held (affirming the decision of Stuart, V.-C., 3 Jur. N. S. 576), that as the plaintiff had not proved that the contents of the letter were communicated to the committee, that as he had not acted with common prudence and caution in taking the shares, and as the subsequent transactions into which he entered were of an irregular kind, he was entitled to no relief. *Robson v. Devon (Earl)*, 4 Jur. N. S. 245—L. J.

Bill to be
relieved
against fraud
as to shares.

Two companies competed for tender of leases of railways in France. Each proposed that half the capital should be subscribed for in England, and English committees were appointed. Neither company complied with the requirements of the French government as to deposits; and they were afterwards united, and it was agreed that the then expenses of each committee should be separately paid by that body. Being still unable to

make up the full amount of subscriptions, a union was negotiated between the united companies and a third company, and subsequently an agreement was come to. The original united company then determined to close their affairs, and meetings were held, at which (although the mode of the appropriation was variously represented) certain shares were appropriated and given to the chairman of one of the English committees, who sold them at a premium. Some members of the English committee of the other of the two original companies filed their bill, praying an account of the produce of those shares, and for a division among those entitled after payment of all expenses. Several accounts were given of what passed at the meeting at which the appropriation was made. The court, assuming that the persons present had power to do what they did (there being no fraud proved), dismissed the bill. *Rossmore (Lord) v. Mowatt*, 15 Jur. 238.

The plaintiff and defendant were directors in a railway company. The plaintiff was desirous of obtaining 1,000*l.* "unallotted" shares, in order to promote its success. The defendant clandestinely caused 1,000 of his own "allotted" shares to be transferred to the plaintiff. The transaction took place in July, 1853, but was discovered in June, 1854, and a bill was filed in November following to set aside the transaction: the court held the transaction was void and set it aside, and that there had been no laches. *Blake v. Mowatt*, 21 Beav. 603.

Contribution.

A suit was instituted against the directors of an abortive company to make them liable for acts of mismanagement and misappropriation of the funds. The suit was compromised by an order on the directors to pay a fixed sum. One of them, who had paid more than his share, sustained a suit for contribution only in respect of such compromise, and the co-director could not with a cross bill make the plaintiff at the same time account for his general liabilities. *Pool v. Masterman*, 21 Beav. 61.

An official manager of an unincorporated company cannot institute a suit on behalf of some of the members against others to make the latter liable for the misapplication of the funds. Although under some circumstances an official manager of such a company may institute a suit, as a general rule he can neither sue nor be sued at law or in equity, nor if he can sue can he do so unless he represents the whole company. The 50th sect. of 11 & 12 Vict. c. 45, applies to corporate as well

as to incorporate bodies, the words "on behalf of a company" meaning "in right of," or "as representing," and not "for the benefit of." Where an official manager cannot, under sects. 52 and 53 of the act 11 & 12 Vict., carry on an existing suit, he cannot institute a new one. Where, in the course of winding-up a company, a suit is instituted by the official manager to recover funds from some of the members, such suit is not a part of the winding-up. Where an objection to a suit, although upon a ground upon which there is no authority, might have been by demurrer, but is not taken, and the suit is allowed to go to a hearing, and the bill is dismissed on account of that objection, the dismissal will be without costs. *Ernest v. Weiss*, 11 W. R. 266.

A suit was instituted by three members of a freehold land society on behalf of themselves and the other members of the society against another member. The society was afterwards ordered to be wound-up; and on the application of the three plaintiffs the name of the official manager was substituted as plaintiff. The judge would not allow the official manager to prosecute the suit, who then moved to stay proceedings therein, on such terms as the court should think fit. The motion was refused with costs to be paid by the official manager personally. *Caldwell v. Ernest*, 27 Beav. 29. A motion was subsequently made by the defendant to dismiss for want of prosecution. The order was made with costs to be paid by the plaintiff, and not by the official manager, who had not adopted the suit. *Caldwell v. Ernest*, 27 Beav. 42.

Adoption of suits by official manager.

The general practice as to injunctions will be found in Smith's Ch. Pr. pp. 822—829, 7th ed. See Morgan's Ch. Acts and Orders, pp. 485—488, 3rd ed., and 2 Lindley on Partn. pp. 845—849, where injunctions relative to companies will or will not be granted.

A single shareholder of a company may apply for and obtain an injunction to restrain the company from committing an act beyond their powers. *Charlton v. Newcastle and Carlisle Railway Company and North-Eastern Railway Company*, 5 Jur. N. S. 1096. In the case of a resolution having been passed by the shareholders of a company authorizing acts partly within and partly beyond their powers, such acts being distinct and capable of being carried out alone, a shareholder is not bound to apply for an injunction to restrain the company from exceeding their powers until he knew that an attempt will be made to effect the illegal part of the resolution. *Ib.*

Injunction against company.

Unless an actual injury results to a private individual himself from the excessive exercise of the powers of a company, he is not entitled to an injunction. *Ware v. Regent's Canal Company*, 5 Jur. N. S. 25; 25 L. J., Ch. 153—C.

One of the promoters of an abortive company will not be restrained from bringing an action for money advanced by him to the other promoters for the purposes of the company. *Hamilton v. Smith*, 5 Jur. N. S. 32.

A public company exceeding its legislative limits cannot be restrained by injunction at the suit of a co-rival company, which does not allege that it has sustained some private injury by such excess, though the acts complained of may be injurious to the public interests. *Stockport District Waterworks Company v. Mayor of Manchester*, 11 W. R. 156.

Where the promoters of the new undertaking signed the subscription contract for sums which they represented to parliament as out of their own funds, but which in fact they borrowed and afterwards sought to charge against the funds of the new company; the court, at the instance of a shareholder of the old company, restrained by injunction such application of the funds. *Spackman v. Lathmore*, 3 Giff. 16; 7 Jur. N. S. 179; 9 W. R. 229.

After the right has been established at law it is for the equity judge, upon the application for an injunction, to determine whether a nuisance is continued or has been abated by a public company in exercising its powers, and although a *bonâ fide* alteration may have been made with the object of abating the nuisance the party is not bound to proceed at law to ascertain the fact. *Imperial Gas Light and Coke Company v. Broadbent*, 5 Jur. N. S. 1319.

Where a company has been amalgamated with and has handed over its assets to another and the united company is insolvent, a shareholder, who is a creditor of the first company, will not be restrained from enforcing a judgment against a shareholder in the first company and in the united company. *Hardinge v. Webster*, 1 Drew. & Sm. 101; 6 Jur. N. S. 88; 29 L. J., Ch. 161.

A bill was filed by a policy-holder "with participation of profits" in a life insurance company, to restrain it from carrying out an arrangement for a transfer of the funds, assets, &c., of such company to another company by way of amalgamation, and for an account of the assets and liabilities of the first company, and for the ap-

pointment of a receiver. On a motion for an injunction the court considered that the policy-holder would not be damnified by the proceedings for amalgamation remaining *in statu quo* until the hearing of the cause, and refused an injunction; the principal part of the arrangement having been carried out, it was questioned whether a policy-holder in a life insurance company, with the benefit of participation of profits, is not a partner. *Bishop v. Scott*, 7 L. J., N. S. 570.

A company may be indicted for violating any public right, for example, by taking up streets without a licence to lay down pipes, although no real damage be done. *Reg. v. Langton Gas Company (Limited)*, 6 Jur. N. S. 601. In such a case it would seem that the attorney-general alone can obtain an injunction. *Ware v. Regent's Canal Company*, 3 De G. & J. 212; see *Att.-Gen. v. Great Northern Railway Company*, 6 Jur. N. S. 1006; 1 Thring's Joint-Stock Companies Acts, p. 66; n.

A bill was filed by a shareholder against the directors of a banking company and the company for an injunction to restrain the directors from paying a dividend already declared, and from declaring or paying any future dividends, except out of the profits of the bank, but the other shareholders were not before the court. The court granted an injunction as to future dividends, but refused to restrain the payment of the dividend which had been declared on the ground that the declaration of the dividend gave the shareholders a legal right to the payment of that dividend, and that the court would not in the absence of the shareholders interfere with that right. *Fawcett v. Laurie*, 1 Drew. & Sm. 192.

Injunction
to restrain
payment of
dividend.

A foreign ambassador cannot be impleaded before an English tribunal. The court granted an interim injunction to restrain a shareholder from paying over a fund *in medio* to the principal possessing the legal interest, and although such principal was absent and not amenable to its jurisdiction. *Gladstone v. Musurus Bey*, 1 New Rep. 178; see *Gladstone v. Ottoman Bank*, before V.-C. Wood, 27th February, 1863, deciding that the court has no jurisdiction to control the exercise of the prerogative of an independent sovereign as to concessions granted to the bank of Turkey.

IV. CONVENTIONS RELATIVE TO JOINT STOCK COMPANIES, AND HEREIN OF FOREIGN COMPANIES.

Convention between her Majesty and the Emperor of the French relative to Joint Stock Companies(a). Signed at Paris, April 30, 1862. Ratifications exchanged at Paris, May 15, 1862.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Majesty the Emperor of the French, having judged it expedient to come to an understanding in order to define, within their respective dominions and possessions, the position of commercial, industrial and financial companies and associations constituted and authorized in conformity with the laws in force in either of the two countries, have resolved to conclude a convention for that purpose, and have named as their plenipotentiaries, that is to say :

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Henry Richard Charles Earl Cowley, her Majesty's ambassador extraordinary and plenipotentiary to the Emperor of the French ;

And his Majesty the Emperor of the French, M. Edouard Antoine Thouvenel, senator, his minister and secretary of state for the department for foreign affairs :

Who, after having communicated to each other their respec-

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, et sa Majesté l'Empereur des Français, ayant jugé utile de s'entendre, pour régulariser dans leurs états et possessions respectifs, la situation des compagnies et associations commerciales, industrielles et financières, constituées et autorisées suivant les lois particulières de chacun des deux pays, ont résolu de conclure une convention dans ce but, et ont muni à cet effet de leurs pleins pouvoirs, savoir :

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, le Très Honorable Henri Richard Charles Comte Cowley, son ambassadeur extraordinaire et plenipotentiaire près sa Majesté l'Empereur des Français ;

Et sa Majesté l'Empereur des Français, M. Edouard Antoine Thouvenel, sénateur, son ministre et secrétaire d'état au département des affaires étrangères :

Lesquels, après s'être communiqué leurs pleins pouvoirs

(a) There is a similar convention between her Majesty and the King of Belgium. Signed at London, 13th November, 1862. Ratification exchanged at London, December 8, 1862. London Gazette, 9th December, 1862, pp. 62—66 ; Solicitors' Journal, 13th December, 1862, p. 112

re full powers, found in good and due form, have agreed upon and concluded the following articles :—

ARTICLE I.

The high contracting parties declare that they mutually grant to all companies and other associations, commercial, industrial or financial, constituted and authorized in conformity with the laws in force in either of the two countries, the power of exercising all their rights, and of appearing before the tribunals, whether for the purpose of bringing an action or for defending the same, throughout the dominions and possessions of the other power, subject to the sole condition of conforming to the laws of such dominions and possessions.

ARTICLE II.

It was agreed that the stipulations of the preceding article shall apply as well to companies and associations constituted and authorized previously to the signature of the present convention, as to those which may subsequently be so constituted and authorized.

ARTICLE III.

The present convention is concluded without limit as to duration. Either of the high powers shall, however, be at liberty to terminate it by giving to the other year's previous notice. The two high powers, moreover, reserve to themselves the power to introduce into the convention, by

respectifs, trouvés en bonne et due forme, sont convenus des articles suivans :—

ARTICLE I.

Les hautes parties contractantes déclarent reconnaître mutuellement à toutes les compagnies et autres associations commerciales, industrielles ou financières, constituées et autorisées suivant les lois particulières à l'un des deux pays, la faculté d'exercer tous leurs droits, et d'ester en justice devant les tribunaux, soit pour intenter une action, soit pour y défendre, dans toute l'étendue des états et possessions de l'autre puissance, sans autre condition que de se conformer aux lois des dits états et possessions.

ARTICLE II.

Il est entendu que la disposition qui précède s'applique aussi bien aux compagnies et associations constituées et autorisées antérieurement à la signature de la présente convention, qu'à celles qui le seraient ultérieurement.

ARTICLE III.

La présente convention est faite sans limitation de durée. Toutefois, il sera loisible à l'une des deux hautes puissances contractantes de la faire cesser en la dénonçant un an à l'avance. Les deux hautes puissances contractantes se réservent d'ailleurs la faculté d'introduire, d'un

common consent, any modifications which experience may show to be desirable.

ARTICLE IV.

The present convention shall be ratified, and the ratifications shall be exchanged at Paris in fifteen days, or sooner if possible.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done in duplicate at Paris, the 30th of April, 1862.

commun accord, dans cette convention les modifications dont l'utilité serait démontrée par l'expérience.

ARTICLE IV.

La présente convention sera ratifiée, et les ratifications en seront échangées dans le délai de quinze jours, ou plus tôt si faire se peut.

En foi de quoi, les plenipotentiaries respectifs l'ont signé, et y ont apposé le sceau de leurs armes.

Fait en double original à Paris, le 30 Avril, 1862.

(L.S.) COWLEY.
(L.S.) THOUVENEL.

By stat. 24 & 25 Vict. c. 11, provision is made for ascertaining the law of any foreign state with the government of which her Majesty may enter into a convention for the purpose of mutually ascertaining the law of such foreign country or state when pleaded in actions depending in the courts of this country.

Foreign corporations may sue and make contracts in other countries.

It may be considered as a settled principle of law, that a corporation in one state or country may not only sue but may make valid contracts in another, provided their charter warrants such contracts and there is no positive disability by statute for a corporation to make such contracts in the state where they are made. As a general rule, personal rights and contracts have no locality, and the laws of comity apply in their fullest extent between the several states of the union. *Bank of Augusta v. Earl*, 13 Peters. 519; 2 Kent's Comm. 326, n., 8th ed.

When a foreign rule of law is repugnant to the fundamental principles of the *lex fori*, or where it is contrary to religion or sound morality, the doctrine of comity ought not to be followed. If the adoption of the law of the domicile would occasion a prejudice to the rights of other states and their citizens, or it would contravene a

prohibitory enactment, the comity of nations would not require its adoption. *Fenton v. Livingstone*, 3 Macq. H. L. C. 497.

A corporation duly created according to the laws of one state may sue and be sued in its corporate name in the courts of other states. Story's Conf. of Laws, s. 565; *Dutch West India Company v. Moses*, 1 Stra. 611. The reports contain several instances of actions and suits instituted as well by as against foreign unincorporated companies. *South Carolina Bank v. Case*, 8 B. & C. 427; *Lewis v. Baldwin*, 11 Beav. 153; *Ludlow v. Dutch Rhenish Railway Company*, 21 Beav. 43; *Maclaren v. Stainton*, 16 Beav. 279; *Mackenzie v. Sligo and Shannon Railway Company*, 8 Q. B. 862; *Welland Railway Company v. Blake*, 6 H. & N. 410.

Trading corporations belonging to foreign countries may sue here under their name of reputation; but they must show that they are incorporated in the foreign country, and whether they are so is a question for the jury. *Dutch East India Company v. Van Mayers*, Str. 612; *Henriques v. Dutch West India Company*, 2 Lord Raym. 1532; 1 Str. 612; 2 Str. 807. In the next case evidence was given of a charter from the King of Spain constituting the corporation. *Bank of St. Charles v. De Bernales*, 1 Car. & P. 569; Ry. & M. 190.

A judicial court cannot take notice of a government never authorized by the government of the country in which that court sits, and whether the foreign government is recognized or not, is matter of notoriety. *City of Berne v. Bank of England*, 9 Ves. 347.

By an act of the legislature of New South Wales, it was provided that a banking company should sue and be sued in the name of its chairman, and that execution on any judgment against the company might be issued against the property of every member for the time being, in like manner as if such judgment had been obtained against such member personally. In an action against the member of a company on a judgment obtained in the colony against the chairman: it was held that the colonial legislature had authority to pass the act, and that there was nothing repugnant to the law of England or to natural justice in enacting that actions on contracts made by the company in the colony, instead of being brought against the shareholder individually, should be brought against the chairman, whom they had appointed to repre-

sent them. A judgment recovered in such an action after service on the chairman had the same effect beyond the territory of the colony which it would have had if the defendant had been personally served with process, and he being a party to the record, the recovery had been personally against him. *Bank of Australasia v. Nias*, 16 Q. B. 717.

A person residing in England who is a member of a company carrying on business in a colony, must be taken to know the law of the colony. *Bank of Australasia v. Harding*, 9 C. B. 661; 14 Jur. 1094; 19 L. J., C. P. 345. A foreign judgment though conclusive when it was given, is only *prima facie* evidence of a debt being due, and cannot be pleaded in bar to an action brought in England for the same cause. *Ib.* The members of a company formed for the purpose of carrying on business in a colony are not discharged from liability on judgments obtained in the colony against the chairman, by reason of their having been resident in England, not being served with process and having received no notice of the proceedings. *Ib.*; see *Kelsall v. Marshall*, 1 C. B., N. S. 241.

Where contract is to be performed.

The performance of the contract is to be in the place where it is made, either expressly or by tacit implication. But where the contract is either expressly or tacitly to be performed in any other place, there the general rule is in conformity to the presumed intention of the parties, that the contract as to its validity, nature, obligation and interpretation, is to be governed by the law of the place of performance. 2 Kent's Comm. sect. 37, pp. 393, 394; Story's Conf. sect. 280.

In one of the earliest cases, Lord Mansfield stated the doctrine with his usual clearness:—"The law of the place can never be the rule where the transaction is entered into with an express view to the law of another country as the rule by which it is to be governed." *Robinson v. Bland*, 2 Burr. R. 1077, 1078. And this has uniformly been recognized as the correct exposition of the common law. *Ludlow v. Van Rensselaar*, 1 John. R. 94; Story's Conf. of Laws, ss. 281, 308—314; Chitty on Contr. pp. 88—91, 7th ed.

But although the general rule is so well established the application of it in many cases is not unattended with difficulties, for it is often a matter of serious question in cases of a mixed nature which rule ought to prevail, the law of the place where the contract is made or that of the

place where it is to be performed. In general it may be said that if no place of performance is stated or the contract may indifferently be performed anywhere, it ought to be referred to the *lex loci contractus*. But there are many cases where this rule will not be a sufficient guide. Story's Confli. of Laws, s. 282. Mr. Burge has expressed the true sense of the general rule and its qualifications in the following terms :—"It may be stated generally that with respect to contracts, of which movable property is the subject, the law of the place in which the contract is made will in some respects exclusively prevail, although the contract is to be performed in another; and that in those respects in which it does not prevail the law of the place where the contract is to be performed must be adopted. But this conclusion is subject to some qualifications and exceptions." 3 Burge's Comm. on Col. and For. Law, pt. 2, ch. 20, pp. 778, 779.

If personal chattels are sold in a manner binding, according to the law of the country in which they are disposed of, such disposition is binding in this country. *Cammell v. Sewell*, 5 H. & N. 728; 6 Jur. N. S. 918; 29 L. J., Exch. 350; 8 W. R. 639, Exch. Ch.

An action was brought on a judgment recovered in the Supreme Court of New York in America. A plea set forth the record of the proceedings and the judgment, from which it appeared that the plaintiffs, who carried on business in New York, became the purchasers of certain bills of exchange, and that the action was brought against the defendants, who carried on business at Liverpool, for not accepting the same; that this action was referred by order of the court of New York to an officer of the court to ascertain the facts, and he reported that one of the defendants being in New York, wrote and delivered to F. & A. a letter of credit, giving authority to them to draw exchanges on the defendants, and stating that all such exchanges would be duly honoured and protected; that this letter was deposited by F. & A. with S. & Co., bankers in New York, and a bill of exchange was drawn on the defendants by F. & A., payable to their order in London, and was sold by S. & Co. to the plaintiffs; and that the bill was presented to the defendants for acceptance at Liverpool, and acceptance thereof refused, and the arbitrator found as conclusions of law that this letter operated as a contract by the defendants, that the bills should be accepted by them, and that the contract was to be governed by the law of New York, and therefore

Operation of
foreign
judgments.

the plaintiffs were entitled to judgment for the amount of the bills, and that the judgment was erroneous according to the law of New York and was liable to be reversed, and that the defendants were prosecuting an appeal which was pending: it was held, first, that though the pendency of the appeal might afford ground for the equitable interposition of the court to stay execution in the action, it was not a bar to the action. *Scott v. Pilkington, Munroe v. Pilkington*, 2 Best & S. 11; 8 Jur. N. S. 557; 31 L. J., Q. B. 81. It was held secondly, that the effect of the circumstances in question in creating a liability on the part of the defendants to the buyers of the bills depended on the *lex loci* of the contract; and the court of New York having decided what the law is, judgment must be given in conformity with it in this action. *Ib.*

French law—
jurisdiction
of courts.

It seems that the rule of the French law in order to give jurisdiction to a court of justice over a defendant in a civil action is, that the suit must follow the person of the debtor, and that the action must be brought against him in his domicile réel. This rule is, however, subject to the qualification that a person may elect a special domicile for the purpose of his trade or for other purposes, and that such elected or conventional domicile is for those purposes equivalent to his domicile réel. But inasmuch as the election of such domicile draws after it most grave and extensive liabilities, it is settled not only that the appointment of an agent in a colony with the largest powers by a domiciled Frenchman, does not amount to an election of domicile in the place where such power is to be executed, but that no agent with powers however extensive can make such election on the part of his principal, unless his power contains express authority to do so. *Lang v. Reid*, 12 Moore, P. C. C. 72.

Remedy here
for torts
committed
abroad.

If by the laws of a foreign state there is a civil remedy for a wrong done there, the fact that by those laws criminal proceedings must precede the civil remedy there constitutes no bar or defence to an action in this country. *Scott v. Seymour* (Lord), 8 Jur. N. S. 568; 31 L. J. Ex. 467; 10 W. R. 739; affirmed on appeal, 11 W. R. 169—Ex. Cham.

An association was formed for making a railway from Madrid to Valencia by means of a company, which was to be a *compania anonima*, having its locale in Spain, and being subject to the commercial code of Spain. Two-thirds of the capital were to be subscribed in England and the remainder in Spain. The Spanish directors

had been unable to raise one-third of the capital and had therefore returned the deposits: it was held that the company was (so far as related to the English subscribers) within the scope of the Joint Stock Companies Winding-up Act, 1848, and that the circumstances authorized the interference of the court under that act. *Re Madrid and Valencia Railway Company, Ex parte James*, 1 Hall & T. 597; 2 Mac. & G. 169; 3 De G. & S. 127. See further cases as to winding-up:—*Ex parte Chippendale*, 2 De G., M. & G. 10, a German mining company; *Barclay's Case*, 26 Beav. 177, a Mexican mining company; *Ex parte Wolesey*, 3 De G. & S. 101, an Indian railway company; *Ex parte Moss*, 14 Jur. 754, a Belgian railway company; *Ex parte Watson*, 3 De G. & S. 253, a Calcutta bank, where no order was made.

To an action on a foreign judgment, it is no answer that the defendant became a party to it merely to prevent the seizure of his property, and that the judgment is erroneous in fact and in law on the merits, whether the plea alleges that the error does or does not appear on the face of the judgment, nor can the defendant plead that the enforcement of the judgment in England is contrary to natural justice, on the ground that he had discovered fresh evidence, showing that the judgment is erroneous in fact and in law on the merits, or that evidence was improperly admitted. *De Cosse Brissac v. Rathbone*, 6 H. & N. 301; 30 L. J., Ex. 238.

Actions on foreign judgments.

A plea of judgment recovered in a foreign court of competent jurisdiction must show that the judgment is final and conclusive between the parties, according to the law of the place where such judgment is pronounced. *Frayes v. Worms*, 10 C. B., N. S. 149; see Chitty on Contracts, pp. 703—705, 7th ed.

The court will not stay proceedings in an action commenced in this country against a foreigner, by a plaintiff who had already commenced an action against him on the same cause of action in the courts of his own country, on the ground of the pendency of the proceedings abroad. *Cox v. Mitchell*, 7 C. B., N. S. 55; 6 Jur. N. S. 225; 29 L. J., C. P. 33; 7 W. R. 45.

Proceedings not stayed here on foreign action.

In the case of companies and societies formed for purposes of commerce or traffic, it is difficult to assign a definite seat, and in these cases the domicile must either be specified in the charter by which they are constituted, or the court which exercises jurisdiction respecting the

Domicil of companies.

company must determine by artificial rules, which is the central point of the enterprise, and thence declare the domicile. See 4 Phill. Intern. Law, p. 139.

A Scotch incorporated company having manufactories in Scotland, but having houses of business in England, which the company necessarily carry on by agents or managers, and having considerable personal property in England, may, for the purposes of jurisdiction, be deemed to have two domicils. Its business being necessarily carried on by agents, there is no reason for confining its domicile to the place where the goods are manufactured. Both places of business may, for the purposes of jurisdiction, be deemed the domicile. *Per* Lord St. Leonards, *Carron Iron Company v. Maclaren*, 5 H. L. Cas. 449, 450; 16 Beav. 279; see Westlake's Intern. Law, p. 50.

A corporation can be said to dwell, for the purposes of jurisdiction, at the place where its business is carried on. *Taylor v. Crowland Gas Company*, 11 Exch. 1. The Great Western Railway Company has its principal station at Paddington, where the directors meet, the secretary resides, general meetings are held, and whence orders emanate. It was held, that the company dwells at Paddington, within the meaning of that word in the act 9 & 10 Vict. c. 95, s. 128, and consequently that where a plaintiff in an action against the company dwelt more than twenty miles from Paddington, the superior court had concurrent jurisdiction. *Adams v. Great Western Railway Company*, 6 H. & N. 404. It has since been held, that a railway company does not carry on its business within the meaning of the 60th section of the act 9 & 10 Vict. c. 95, at any place other than its principal office, at which its business is managed. *Shields v. Great Northern Railway Company*, 7 Jur. N. S. 631.

A company carrying on business in London, which employs in a country town a general commission agent, who transacts the company's business in such town, in an office for which the company pays him rent, do not carry on business in that town, within the meaning of the 9 & 10 Vict. c. 95, s. 128. *Corbett v. General Steam Navigation Company*, 4 H. & N. 482. So a railway company does not carry on business, within the same act, at a receiving house or booking office kept by an agent for the receipt and booking of parcels and packages for all the railways generally. *Minor v. London and North Western Railway Company*, 1 C. B., N. S. 325.

Although a foreign company may have its principal

place of business abroad, and be therefore domiciled abroad, it may be sued in the courts of this country, if it is in fact amenable to the process of such courts. There is no difference in this respect between a foreign individual and a foreign corporation, except that the individual may be amenable to process both in his person and in his property, whilst a corporation domiciled abroad can, it is conceived, only be amenable to process through its property and its agents. In neither case, however, does the simple fact of a foreign domicile exclude the jurisdiction. See *Maclaren v. Stainton*, 16 Beav. 279, and the judgment of Lord St. Leonards, 5 H. L. Cas. 450.

The jurisdiction of English courts over foreign companies was discussed in *Norris v. Chambers*, 29 Beav. 246, affirmed on appeal, 7 Jur. N. S. 689, in which it was held, that a mere lien on property situate abroad cannot be enforced here, unless such lien is founded on some contract or transaction creating a personal obligation on the part of the defendant in favor of the plaintiff. See *Hunter v. Stewart*, 31 L. J., Ch. 346; *ante*, p. 417.

Notwithstanding the difference of opinion in the case of the *Carron Iron Company v. Maclaren*, 5 H. L. Cas. 416; 16 Beav. 279, companies formed in this country for the purpose of carrying on business abroad, but having their principal place of business here, are clearly subject to the jurisdiction of the English courts. See *Madrid and Valencia Railway Company*, 3 De G. & S. 127; 2 Mac. & G. 169; *ante*, p. 459; *Butt v. Monteaux*, 1 K. & J. 98; see Supplement to Lindley on Partn. pp. 23, 24.

A company formed under the Companies Act, 1862, will, for the purposes of that act, be considered as resident in that part of the United Kingdom in which the company's registered office is situate. See *ante*, ss. 8—10, pp. 13—18.

For the purpose of determining the court in which an unregistered company is to be wound-up under the same statute, the company is to be considered as registered in that part of the United Kingdom in which its principal place of business is situate. *Ante*, s. 199, p. 230.

As to taking evidence in matters pending before foreign tribunals, see 19 & 20 Vict. c. 113; 22 Vict. c. 20.

FORM OF MEMORANDUM OF ASSOCIATION.

Memorandum of Association

OF THE

—— SLATE QUARRY COMPANY, LIMITED.

1st. THE name of the company is the [*name*] Slate Quarry Company, Limited.

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, the working and developing the slate quarries, situate in the township of in the parish of in the county of Carnarvon, and the manufacturing and selling the slates and slabs won or obtained therefrom ; and also (as a secondary object only) the selling, or leasing, or granting rights to work, win and sell the flag and other stones, and other ores, mines and minerals which may be won or obtained, or found in the quarrying, working or developing such slate quarries, and the doing all such other things as are incidental or conducive to the attainment of the above objects.

4th. The liability of the members is limited.

5th. The nominal capital of the company is divided into shares of ten pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	No. of Shares taken by each Subscriber.

Witness to the signatures of

Dated the 22nd day of January, 1863.

Registered with Articles of Association.

Certificate of incorporation, dated the 31st day of January, 1863.

FORM OF ARTICLES OF ASSOCIATION.

Articles of Association

OF THE

——— SLATE QUARRY COMPANY, LIMITED.

It is agreed as follows:—

The articles of table A, in the first schedule to the Companies Act, 1862, shall not apply except so far as the same have been inserted in and are to be actually found in these presents without referring to the said table A, and in lieu thereof the company shall be subject to the following articles:

1. The company shall, if and when the same can be obtained, take an assignment of the existing lease or licence, dated &c., and made by to (*four of the subscribers*) their executors, administrators and assigns, for the term of twenty-one years from the day of 186 , to dig, mine, search for, raise, quarry and work the slate rocks and slate quarries called the Quarry; and also the beds of slate of all kinds and qualities, and all manner of mines, minerals, pits and veins of lead, tin ore, copper ore or other metal or metals, minerals and productions now open and known, or that may be found in, upon or underneath certain closes of land, part of a certain messuage, tenement, farm and lands of the said [lessor] called situate in the township of in the parish of in the county of ; and may also take a lease or licence of the same premises, either to the company or to trustees or a trustee for the company, for such further term, by way of renewal or otherwise, as the company may think fit, and as can be obtained. The company may also purchase the plant, stock and effects belonging or appertaining to the said quarry, or used in the work-

ing thereof. Until a legal assignment of the said existing lease or licence can be obtained, the said [four subscribers], their executors, administrators and assigns, will hold the said lease or licence, and the premises thereby granted or demised in trust for the company, and a proper declaration of trust to that effect shall be executed; and the company shall give them a proper indemnity against the rent, royalties, covenants and conditions reserved and contained by and in the said lease or licence.

Shares.

2. No person shall be deemed to have accepted any share in the company unless he has testified his acceptance thereof by writing under his hand.

Shares to be accepted in writing.

3. The directors may from time to time make such calls upon the members in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days' notice at least be given of the making of each call; and each member shall be liable to pay the amount of calls so made to the persons, and at the times and places appointed by the directors.

Power to make calls.

4. A call shall be deemed to have been made at the time when the resolution authorizing such call was passed.

When call deemed to be made.

5. If before or on the day appointed for payment any member does not pay the amount of any call to which he is liable, then such member shall be liable to pay interest for the same at the rate of five pounds per cent. per annum, from the day appointed for the payment thereof to the time of the actual payment.

Members to pay interest on unpaid calls.

6. The directors may, if they think fit, receive from any of the members willing to advance the same, all or any part of the monies due upon their respective shares, beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the share in respect of which such advance has been made, the directors may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Company may receive calls in advance, and pay interest.

7. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividends payable in respect of such share.

One of several joint registered holders of shares may give receipts.

8. Every member shall, on payment of such sum not exceeding one shilling as the directors may prescribe, be

Certificate of shares.

entitled to a certificate under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

Renewal of
certificate.

9. If such certificate is worn out or lost, it may be renewed on payment of such sum, not exceeding one shilling, as the directors may prescribe.

Transfer and Transmission of Shares.

10. No member shall sell or transfer any share or shares to any person other than an existing member until the expiration of twelve calendar months from the date of the incorporation of the company.

11. No sale or transfer of any share shall at any time be made to any person other than the existing members of the company until such share shall have been offered for sale to them at such a price as shall be agreed upon, or, in case of difference, as shall be determined by valuation in the usual way. If such offer is not accepted by any member within one calendar month next after such offer, then any share so offered for sale may be disposed of as the holder thereof may think fit. A letter sent to and received by the secretary, or managing director of the company, offering any share or shares for sale, shall be deemed to be an offer for sale to all the existing members for the purposes of this article.

12. The company may decline to register any transfer of any share or shares made by a member who is indebted to them, or which for any other reason they may deem it inexpedient to register.

Executors of
deceased
member to be
recognized
member.

13. The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share.

Any person
becoming en-
titled in any
other way
than by
transfer may
be registered
on producing
evidence.

14. Any person becoming entitled to a share in consequence of the death or bankruptcy of any member, or in any way other than by transfer, may be registered as a member, upon such evidence being produced as may from time to time be required by the company.

Such person
may make a
nominee.

15. Any person who has become entitled to a share in any way other than by transfer, may, instead of being registered himself, elect to have some person to be named by him registered as transferee of such share.

Such nomi-
nation to be
testified by a
transfer.

16. The person so becoming entitled shall testify such election by executing to his nominee a deed of transfer of such share.

All deeds of
transfer to

17. Every deed of transfer shall be left at or sent to the office of the company for approval by the directors, ac-

companies by such evidence as may be required by the directors to prove the title of the transferor, and such approval shall be certified by writing under the hands of any two of them endorsed on such deed of transfer, and thereupon (subject to the power to decline to register hereinbefore contained) the company shall register the transferee as a member.

be approved
by the
directors.

18. Any transfer, or pretended transfer of any share, not being approved by the directors, shall be absolutely void, and notice of such non-approval shall forthwith be sent to the member purporting to transfer such share.

Transfer not
approved of
to be void.

19. The transfer books shall be closed during the fourteen days immediately preceding each of the two ordinary general meetings in each year.

Transfer
book to be
closed for
fourteen days
previous to
each half-
yearly
meeting.

Forfeiture of Shares.

20. If any member fail to pay any call due on the appointed day, the directors may at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with any interest that may have accrued by reason of such non-payment.

If member
neglect to
pay call,
notice to be
sent.

21. The notice shall name a further day, and a place or places on and at which such call and interest is to be paid. It shall also state that, in the event of non-payment at the time and place appointed, the share or shares in respect of which such call was made, will be liable to be forfeited.

Such notice
to name a
further day.

22. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.

If requisitions of
notice not
complied
with, share
to be for-
feited.

23. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting shall determine.

Forfeited
shares to be
the property
of the com-
pany.

24. Any member whose share or shares has or have been forfeited, shall, notwithstanding, be liable to pay the company all calls and interest owing upon such share or shares at the time of forfeiture.

Owners of
forfeited
shares to be
liable to calls
owing at the
time of
forfeiture.

No. 25 is the same as No. 22, *ante*, p. 246.

Conversion of Shares into Stock.

Nos. 26—28 are the same as Nos. 23—25, *ante*, p. 246.

Increase of Capital.

Power to
increase
capital.

29. The company may, with the sanction of the company previously given at an extraordinary general meeting, as hereinafter provided, increase its capital.

The existing
members
are to have
the right of
taking up all
the shares.

30. In case of any increase in capital by the creation of new shares, the option of taking such shares at par shall, in the first place, be given to the existing members for the time being, in a proportion according to the number of the shares for the time being held by each member; and all such new shares as shall not in such manner be taken up by the existing members in the course of one calendar month from the passing of the resolution to increase such capital, shall be disposed of by the directors to the best advantage, and for the benefit of the company.

Capital
raised by
new shares to
be considered
part of the
original
capital.

31. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

Two general
meetings in
each year.

32. Two general meetings of the company shall be held in every year, at such time and place as the directors shall determine, and each of such general meetings shall be called "an ordinary general meeting," and all other general meetings shall be called "extraordinary general meetings."

Directors
may, and on
requisition
of one-fifth
of share
holders shall,
call an extra-
ordinary
general
meeting.

33. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any number of members holding in the aggregate not less than one-fifth part of the shares of the company, convene an extraordinary general meeting.

Requisition
to express
the object of
proposed
meeting.

34. Any requisition so made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

If directors
do not con-
vene a meet-
ing, requi-
sitionists or
members
may convene
an extraor-
dinary gene-
ral meeting.

35. Upon such requisition being left at the registered office of the company, the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition the requisitionists, or any other members holding the required number of shares, may themselves convene a meeting.

Seven clear

36. Seven clear days' notice at the least, specifying the place, the day, the hour of meeting, and the purpose

for which any general meeting is to be held, shall be given by letter addressed to each of the shareholders; but the non-receipt by any member of such notice shall not invalidate the proceedings of a general meeting.

days' notice to be given.

37. Any member may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

Member on three days' notice may submit resolution.

38. The notice required of a member shall be given by leaving a copy of the proposed resolution at the registered office of the company.

Notice to be given by leaving copy at office of company.

39. Except in the case mentioned in the next article, and except the declaration of a dividend, no business shall be transacted at any meeting unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows, that is to say, if the members belonging to the company at the time of the meeting do not exceed ten in number, the quorum shall be three; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

Quorum of shareholders for meeting.

40. If within half-an-hour from the time appointed for the meeting the required number of members are not present, the meeting, if convened upon the requisition of one or more of the members, shall be dissolved; in any other case it shall stand adjourned to the following day, at the same time and place; and such adjourned meeting, although the required number of members are not present, may transact the business in the same manner as if a quorum was present.

Dissolution and adjournment of meetings.

41. The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left untransacted or unfinished at the meeting from which the adjournment took place, unless notice be given of such new business by leaving at the registered office of the company not less than three clear days' notice of the resolution proposed to be submitted at such adjourned meeting.

Only business left undone or unfinished to be transacted at an adjourned meeting.

42. At every general meeting the chair shall be taken by the chairman (if any) of the board of directors, and if he shall be absent or decline to take the chair, or if there

Chair at general meeting.

shall be no chairman of the board of directors, then the chair shall be taken by any director present to be elected by the meeting, or in the absence of all the directors, or in case of the refusal of all those then present, then by any member to be elected by the meeting.

A simple majority to decide (except in special matters).

Chairman to have a casting vote.

Declaration of chairman to be conclusive of a resolution being carried unless a poll is demanded.

Poll.

43. At every general meeting, ordinary or extraordinary, all elections and all other matters which shall come under the consideration of the meeting (except the matters hereinafter specially provided for) shall be decided by a simple majority of votes, and in all cases when the votes are equal the chairman of the meeting shall have a casting vote in addition to his previous vote.

44. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the votes recorded in favour of or against such resolution.

45. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

Business of General Meetings.

46. Seven clear days at the least previously to any general meeting for the election of directors or auditors to be elected by general meeting, a list of the names of the candidates for such respective offices, distinguishing candidates for re-election from new candidates, shall be sent to each member, and no member or other person shall be eligible or be received as a candidate to or for any office at such election, unless his name shall have appeared in such list accordingly.

47. No other business shall be transacted at any general meeting than that for which it shall have been called, and of which notice shall have been given as aforesaid, and it shall be competent for every general meeting, ordinary or extraordinary, and such meeting is hereby empowered to elect to the office of director or auditor, and also for negligence, misconduct, incompetence, or any other cause which in the judgment of the meeting shall appear sufficient, by any resolution to remove from office (immediately or prospectively) any director or auditor, and such removal shall be binding

and conclusive against the person or persons so removed who shall not have or be entitled to any remedy, action, or suit against the company or any officer thereof, at law or in equity, by reason of the same or of any matter arising therefrom, and also to appoint another qualified person in the place of any director or auditor so removed from office, and also to vary the number of such directors and of the auditors, officers, or servants of the company, and for that purpose to determine, either immediately or prospectively, the office of such number of directors or other officers as may be expedient, and to create new or additional officers or servants, and to make the requisite changes in the rotation of their offices, and to receive, examine, pass, or reject the accounts, balance sheets, and reports of the directors and auditors, and to compel the production of any book, paper, deed, or document belonging to the company, and generally to control the board of directors, and to authorize any act whereto the sanction of a general meeting is hereby made requisite, and (except as to the matters specially provided for in the next following article) to discuss and determine upon any question, matter, or thing relating to the affairs of the company which shall arise in the course of the conduct or management thereof and shall be brought before such meeting by any member.

48. It shall be competent for any extraordinary general meeting, and no other, and such meeting, and no other, is hereby empowered by a resolution passed by a majority, which shall consist of at least two-thirds in number and value of such members of the company for the time being entitled to vote, as may be present in person or by proxy at the meeting, and confirmed by a majority of such shareholders for the time being entitled to vote as may be present in person or by proxy at a subsequent meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed to increase at any one time, or from time to time, the capital stock of the company, and for that purpose to create a sufficient number of new or additional shares, and also by a like majority to vary from time to time the amount and number of the said present shares, or of any new or substituted shares to be created by virtue of this power, and for that purpose, if necessary, and so far as the same may be legally done,

Powers of extraordinary general meeting.

To increase capital.

To authorize borrowing of money.

To authorize sale of effects of the company, and dissolution.

to consolidate and amalgamate, or to divide the said present, or such new or substituted shares, in such manner as to such meeting shall seem expedient, and to make all other changes, and do all other acts consequent thereon, or incidental or necessary thereto, and also to direct and empower the directors to borrow and take upon mortgage of the real estate or chattels real belonging to the company, or on such other securities as such meeting may direct, any sum or sums of money not exceeding in the whole half the paid-up capital for the time being of the company, and also to determine on the sale of the property of the company, or any part thereof, or on the dissolution of the company, and the time, mode, and conditions at, in, and on which such sale or dissolution shall be made, and also on the mode in which the proceeds of any such sale shall be dealt with.

Votes of Members.

Proportion of votes.

49. Every member shall have one vote for every share up to ten, he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.

Provision for voting in case of lunatic, or idiot, or infant member.

50. If any member be a lunatic or idiot, he may vote by his committee, *curator bonis*, or other legal curator; and if any member be a minor, he may vote by his guardian, tutor, or curator, or any one of his guardians, tutors, or curators, if more than one.

Where persons jointly entitled, the person whose name stands first on register shall vote.

51. Where persons are jointly entitled to a share or shares, the person whose name stands first in the register of members as one of the holders of such share or shares, and no other shall be entitled to vote in respect of the same.

No members to vote who have not paid up calls, and except as to original members, unless they have held the shares one calendar month.

52. No member shall be entitled to vote at any meeting unless all calls and interest (if any) due from him have been paid, nor (except in respect of shares originally allotted to him) until he shall have been possessed of his shares one calendar month, unless such shares shall have been acquired, or shall have come by bequest, or by marriage, or by succession to an intestate's estate, or by any deed of settlement, after the death of any person who shall have been entitled for life to the dividends of such shares.

Power to appoint proxy.

53. Votes may be given either personally or by proxy; a proxy shall be appointed in writing under the hand of

the appointor, or if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses.

54. No person shall be appointed a proxy who is not a member, and the instrument or mandate appointing him shall be in the form for the time being directed by the company, and shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which such proxy proposes to vote, but no instrument or mandate appointing a proxy shall be valid after the expiration of three months from the date of its execution, and no shareholder shall be appointed proxy for more than three members.

Proxy must be member.

Directors.

55. There shall not be more than seven nor less than five directors of the company, each of whom shall, at the time of his election, and from thence during his continuance in office, hold fifty shares, at the least, in the company's capital; and in the county of &c. [names and addresses], shall be the first or present directors of the company.

There shall not be more than seven nor less than five directors.

56. The directors may be remunerated by the company, the rate of remuneration to be determined by the company in general meeting.

Remuneration of directors.

Powers of Directors.

57. The general conduct and management of the business of the company shall be carried on by the directors, under such regulations as they shall in their discretion think fit to establish; and they may pay all expenses incurred in getting up and registering the company; and they may exercise all such powers of the company as are not by "The Companies Act, 1862," or by these articles declared to be exercisable by the company in general meeting, subject nevertheless to the provisions of these articles, and of "The Companies Act, 1862," and to such regulations as may be from time to time prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made. And particularly they shall be entrusted with and perform and exercise the following powers and duties, (that is to say):

Powers and duties of directors.

1. The appointment and removal of the bankers of the

Articles of Association of a limited Company.

company, and the appointment and removal, and the determination of the duties and salaries of the secretary, manager, superintendent, engineer, solicitors, agents and servants of the company, and the securities (if any) to be taken from them respectively.

2. The calling of general meetings.
3. The instituting, conducting, defending, compromising and abandoning of legal proceedings by and against the company and its officers, and otherwise concerning the affairs of the company.
4. The hiring of an officer for transacting the business of the company, and any wharf, warehouse or premises that may be required for the purposes of the company.
5. The purchasing or leasing of any lands for the purpose of making tramways or other ways for the purposes of the company, or acquiring rights of making such tramways or other ways over any lands without purchasing or leasing the same. The making and forming such tramways or other ways, and the entering into all necessary traffic arrangements with any existing railway company or any railway company hereafter to be formed, and with the proprietor or proprietors of any existing tramway or other way, or any tramway or other way hereafter to be formed, and with any person or corporation who may be desirous of using the tramways or other ways at any time belonging to the company.
6. The entering into contracts for the company, and making, issuing and accepting such bills of exchange and promissory notes, and contracting on behalf of the company such debts and liabilities as may be necessary in transacting the business of the company.
7. The compounding of any debts due to the company, or of any claims and demands of the company.
8. The reference of any claims and demands of and against the company to arbitration, and the performance and observance of the awards thereon.
9. The acting on behalf of the company in all matters relating to bankrupts.
10. The drawing upon the bankers of the company for any sums necessary for payment and satisfaction of any debts due from and any claims and demands

against the company; but all bills of exchange and promissory notes made, accepted, indorsed or signed on behalf of the company, and all drafts and orders shall be made, accepted, indorsed and signed respectively by two of the directors, one of whom shall be the director for the time being acting as the managing director.

11. The making to every ordinary meeting of a full and particular report of the affairs and prospects of the company, including all such details as are sufficient to explain the accounts.
12. The allotting of the shares of the company.
13. The making of calls on the members.
14. The keeping of the register of members and the register of transfers, and the keeping of the seal of the company.
15. The determination of the forms of certificates of shares, and of the transfers of shares.
16. The authorizing of the affixing of the seal of the company, such authorization to be evidenced by the signature to every deed or document whereto the seal may be affixed of two of the directors.

Disqualification of Directors.

58. Every director shall vacate his office—

If he hold any other office or any place of profit under the company.

If he become bankrupt.

If he is concerned in or participates in the profits of any contract with the company.

If he participates in the profits of any work done for the company.

When director to vacate his office.

But the above rules shall be subject to the following exceptions:—

That no director shall vacate his office by reason of his being a shareholder in or member of any incorporated company which has entered into contracts with or done any work for the company; nevertheless, he shall not vote in respect of such contract or work, and if he does so vote, his vote shall not be counted.

Rotation of Directors.

59. At the second ordinary general meeting ensuing the incorporation of the company, and thereafter at every alternate ordinary general meeting, one-third of the di-

One-third of directors to retire at a time.

The order of going out of directors named to be determined by ballot if directors do not agree.

Afterwards to go out in order on list.

Retiring director re-eligible.

General meeting to elect new directors.

If no new directors appointed, the retiring directors to continue to act.

Casual vacancy to be filled up by the directors.

One director may summon a meeting of directors.

Minutes of proceedings of directors to be made.

rectors for the time being, or if the number is not a multiple of three, then the number nearest to one-third shall retire from office.

60. The one-third or other nearest number to retire at the second and fourth ordinary general meeting ensuing the incorporation of the company shall, unless the directors agree among themselves, be determined by ballot.

61. The newly-elected directors shall be placed at the bottom of a list in order determined by lot; and at the sixth ordinary general meeting ensuing the incorporation of the company, and at every subsequent ordinary general meeting at which the directors are to be elected, the first in order on such list shall retire.

62. A retiring director shall be re-eligible.

63. The company at the ordinary general meeting at which any directors retire in manner aforesaid may fill up the vacated offices by electing a like number of persons.

64. If at any meeting at which any election of directors ought to take place all the places of the vacating directors are not filled up, the meeting shall stand adjourned till the next day, at the same time and place; and if at such adjourned meeting all the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, may continue to act until new directors are appointed at the next ordinary general meeting whereat directors are to be elected.

65. Any casual vacancy occurring in the board of directors may be filled up by the directors; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

Proceedings of Directors.

No. 66 is the same as No. 66, *ante*, p. 253.

67. A director may at any time summon a meeting of the directors.

Nos. 68—72 are the same as Nos. 67—71, *ante*, pp. 253, 254.

73. The directors shall cause minutes to be made in books provided for the purpose:—

Of all appointments of officers made by the directors;

Of the names of the directors present at each meeting of directors and committees of directors;

Of all orders made by the directors and committees of directors; and

Of all the resolutions and proceedings of meetings of

the company, and of the directors and committees of directors :

And any such minute as aforesaid, if signed by any person purporting to be the chairman of any meeting of directors or committee of directors, shall be receivable in evidence without any further proof.

74. In case the company in general meeting shall remove any director before the expiration of his period of office, and appoint another qualified person in his stead, the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

whose place he is appointed would have held

A director appointed in place of a director removed by a general meeting shall hold office only as long as director in the same.

Dividends.

75. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

76. No dividend shall be paid except out of the realized profits arising from the business of the company.

77. The directors may, with the sanction of the company in general meeting, before recommending any dividend, set apart out of the realized profits of the company such sum as they may think proper, as a reserved fund to meet any loss occasioned by bad debts or any other contingencies, or for paying off any money borrowed by the company and the interest thereon, or for equalizing dividends, or for extending, increasing or maintaining the works and plant, and premises connected with or necessary for the carrying on or increasing the business of the company, or any part thereof. And the directors may invest such sum so set apart as a reserved fund upon such securities as they with the sanction of the company in general meeting may select.

78. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

79. Notice of any dividend that may have been declared shall be given to each member, or sent by post or otherwise to his registered place of abode; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

80. No dividend shall bear interest as against the company.

Directors, with consent of a general meeting, may declare a dividend.

No dividend to be paid except out of realized profit.

Power to directors to make a reserve fund.

Power to deduct sums due from members.

Notice to be given.

Dividends not to bear interest.

Accounts.

Mode of
keeping
accounts.

81. The directors shall cause true accounts to be kept
Of the stock in trade of the company ;
Of the sums of money received and expended by
the company, and the matter in respect of which
such receipt and expenditure takes place ; and
Of the credits and liabilities of the company.

Books of
account to
be open to
inspection.

82. The books of account shall be kept at the registered office of the company, and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, and shall be open to the inspection of the members during the hours of business.

Half-yearly
statement
to be laid
before general meeting.

83. Twice at least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past half year, made up to a date not more than two calendar months before such meeting.

Form of
statement.

84. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the half-year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting ; and in cases where any item of expenditure which may in fairness be distributed over one year or several years has been incurred in any one half-year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the half-year.

Half-yearly
balance
sheet to be
submitted to
meeting.

85. A balance-sheet shall be made out twice in every year, and laid before the general meeting of the company ; and such balance-sheet shall contain a summary of the property and liabilities of the company, arranged under the heads appearing in the form annexed to the first schedule of "The Companies Act, 1862," or as near thereto as circumstances admit.

Copy of
balance
sheet to be
sent to
members.

86. A copy of such balance-sheet shall, seven clear days previously to such meeting, be given to each member, or sent by post or otherwise to his registered place of abode.

Audit.

87. The accounts of the company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

Accounts to be audited.

88. The first auditor shall be appointed by the directors. Subsequent auditors shall be elected annually by the company in general meeting.

First auditor to be appointed by the directors, subsequent meeting.

89. If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

Provisions to apply to one auditor.

90. The remuneration of the auditors shall be fixed by the company in general meeting.

Remuneration to be fixed by the company.

91. Any auditor shall re-eligible on his quitting office.

Auditor to be re-eligible.

92. If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

Casual vacancy to be filled by extraordinary meeting.

93. If no election of auditors is made in manner aforesaid, the board of trade may, on application of one-fifth in number and value of the members of the company, appoint an auditor for the current half-year, and fix the remuneration to be paid to him by the company for his services.

If no election made, board of trade may appoint.

94. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

Auditor to examine balance sheet.

95. Every auditor shall have a list delivered to him of all books kept by the company; and he shall at all reasonable times have access to the books and accounts of the company; and he may, in relation to such accounts, examine the directors or any other officer of the company.

To have access to all books, &c.

96. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these articles, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs; and in case they have called for explanations or information from the directors or any other officer, whether such explanations or information have been given by the directors or other officer, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

To make a report to the general meeting.

Managing Director.

97. There shall be a managing director of the company, and the said shall be the first managing director; subsequent managing directors shall be appointed and be removable from office by the directors, and the remuneration of the managing director shall be fixed by the directors.

98. The duties of the managing director shall be to manage the business of the company in such manner as shall from time to time be fixed and determined by the directors, and during such time as there shall be no secretary of the company the managing director shall exercise all the powers, and perform all the duties of a secretary of the company.

Secretary.

Secretary.

99. The directors shall have power, if they think fit to do so, to appoint a secretary of the company, who shall perform all the duties usually performed by the secretary of a company with similar objects, and such special or other duties as are prescribed by these articles or may be prescribed by the directors; and the remuneration of the secretary shall be fixed by the directors.

Notices.

Notices may be served personally or by post.

100. Notices requiring to be served by the company upon the members may be served either personally or by leaving the same or sending them through the post in a prepaid letter addressed to the members at their registered places of abode.

When more than one person entitled to a share, notice to be served on one first named on register.

101. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of members; and notice so given shall be sufficient notice to all the proprietors of such share.

Time at which notice by post is to be deemed to have been served.

102. Any notices, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

Names, Addresses and Descriptions of Subscribers.

Witness to the signature of [name or names].

Memorandum of Association

OF THE

——— BANK, LIMITED.

1st. THE name of the company is the [*name*] bank, limited.

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are the transacting every kind of business, the receiving of deposits of money, whether at interest or otherwise, the advancing and lending of money on real, personal or mixed securities, on cash, credit or other accounts, on policies, bonds, debentures, bills of exchange, promissory notes, letters of credit or other obligations on ships and shares of ships, either British or foreign, on rates or tolls of trustees or commissioners of public docks, harbours or other public works, or of any other body of persons whether corporate or otherwise, duly authorized to make, levy or collect rates or tolls under the provisions of any local or general act of parliament, the discounting bills of exchange, promissory notes or other obligations, the advancing of money on the deposit of title deeds, goods, wares and merchandize, bills of sale and bills of lading, delivery orders, warehousemen's or wharfingers' certificates and notes, dock warrants or other mercantile indicia, symbols or tokens, bullion, government or public stocks or funds, whether British, colonial or foreign, exchequer and navy bills, bank and East India stock, stocks and shares of bankers and of banking companies, of insurance companies, of railway, canal, gas and water companies, and in general of all other joint stock companies, corporations, associations and other undertakings of whatever nature or description, whether British, colonial or foreign, annuities, produce of every description, both home and foreign, materials of any kind, whether raw or manufactured and whether home or foreign, and on any other property, funds and effects of whatever kind or description, the making of purchases, investments, sales or any other dealings in any of the above-named articles or securities, or in ships or shares of ships, both British and foreign, and the doing of all matters and things

Memorandum of Association.

which may appear to the company to be incident or conducive to those objects.

4th. The liability of the members is limited.

5th. The capital of the company is one million pounds, divided into ten thousand shares of one hundred pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	No. of Shares taken by each Subscriber.

Dated this day of , 186 .

Witness to the above signatures,

— Solicitor,
[Address.]

Registered with articles of association.

Certificate of incorporation, dated the day of , 186 .

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Articles of Association

OF THE

———— BANK, LIMITED.

IT IS AGREED AS FOLLOW :—

1. The regulations contained in the table marked (A) in the schedule to the “Companies Act, 1862,” or any of them, shall *not* apply to this company.

Table (A.) of the Joint Stock Companies Act, 1862, not to apply.

I. *Interpretation.*

2. In the interpretation of these presents the following words and expressions shall have the following meanings unless excluded by the subject or context :—

Interpretation clause.

“The company” means the “[*name*] bank, limited.” Company.

“The statutes” means and includes the “Companies Act, 1862,” and any and every other act from time to time in force concerning joint stock banking companies with limited liability, and necessarily affecting the company. The statutes.

“These presents” means and includes these articles of association and the regulations of the company from time to time in force. These presents.

“Special resolution” means a special *resolution* of the company, passed in accordance with *sect. 51 of the Companies Act, 1862 (a)*. Special resolution.

Capital.	"Capital" means the capital from time to time of the company.
Shares.	"Shares" means the shares from time to time of the capital.
Shareholders.	"Shareholders" means the duly registered holders from time to time of the shares of the company.
Directors.	"Directors" means the directors from time to time of the company, or as the case may be, the directors assembled at a board.
Board.	"Board" means a meeting of the directors duly called and constituted, or as the case may be, the directors assembled at a board.
Auditors and secretary.	"Auditors" and "secretary" mean those respective officers from time to time of the company.
Ordinary meeting.	"Ordinary meeting" means an ordinary meeting of the shareholders of the company duly called and constituted, and any adjourned holding thereof.
Extraordinary meeting.	"Extraordinary meeting" means an extraordinary meeting of the shareholders of the company duly called and constituted, and any adjourned holding thereof.
Meeting.	"Meeting" means a meeting of shareholders.
Office.	"Office" means the registered office from time to time of the company.
Seal.	"Seal" means the common seal from time to time of the company.
Month.	"Month" means a calendar month.
Singular number.	Words importing the singular number only include the plural number.
Plural number.	Words importing the plural number only include the singular number.
Gender.	Words importing the masculine gender only include the feminine gender.

II. *Constitution.*

- Regulations. 3. The following shall be the regulations of the company but subject to repeal and alteration as provided by these presents.

III. *Business.*

- Company's business. 4. The business of the company shall include the several objects expressed in the memorandum of association, and all matters which from time to time appear to the directors to be expedient for attaining those objects.

5. The business shall be carried on by or under the management of the directors, subject only to such control of meetings as is provided for by these presents. Management.

6. The head banking house of the company shall be either in the city of or the city of ; Places of business.
and the business of the company shall be carried on there and at Birmingham, in the county of Warwick, and at such other place or places, part or parts, as the board may deem advisable.

IV. *Capital.*

7. The capital of the company shall consist of one million pounds sterling, divided into ten thousand shares of one hundred pounds each, to be paid at the times and in the manner hereinafter provided. The directors shall at first issue not less than one-fourth of such capital, being two hundred and fifty thousand pounds in two thousand five hundred shares of one hundred pounds each, but may in their own discretion at any time or from time to time issue the remaining three-fourths of such capital, or any part thereof, in shares of the like amount to such persons as they shall think fit; but when shares to the extent of one-half of the capital shall have been issued, first offering the future shares so to be issued to the then existing shareholders in proportion to the shares then holden by them, such future issue shall be regarded as part of the capital, and not considered as an increase thereto. The board may from time to time, by a resolution passed by a majority consisting of not less than two-thirds of the whole number of directors, reduce the capital to any amount not being less than five hundred thousand pounds, in shares of one hundred pounds each; and the board may also from time to time by a resolution passed by a majority, consisting of not less than two-thirds of the whole number of directors, increase the existing capital to any amount not exceeding four million pounds, by the creation of any number of new shares of one hundred pounds each, not exceeding forty thousand shares in the whole, upon such terms, and either with or without preference or priority as regards dividends or otherwise, over the shares in the then existing capital, as such majority of the directors deem expedient. As to capital and decrease and increase thereof.

8. Provided that no resolution for the creation of new shares beyond the number of ten thousand shares of the capital shall be valid until it shall have been ratified and confirmed by a resolution passed by the shareholders present, personally or by proxy, at an extraordinary Conditions required.

meeting convened for that purpose, and at which there shall be present personally thirty or more persons who have been shareholders for at least three months next previous to such meeting.

How carried
into effect.

9. Whenever it is duly resolved to increase the capital, the directors shall carry the resolution into effect in such manner as they deem most expedient, subject nevertheless to the provisions of the statutes and these presents, and to any special directions (if any) given in reference thereto by the extraordinary meeting at which the resolution of the board may have been ratified and confirmed as aforesaid.

Same as
original
capital.

10. Any capital so created shall, except so far as is otherwise directed by any such special direction, be subject to these presents in the same manner as if it had been part of the original capital.

V. *Shares.*

Acceptance
of shares.

11. An application signed by or on behalf of the applicant for shares in the company, followed by an allotment of any shares thereon, shall be an acceptance of shares within the meaning of these articles; and every person who thus or otherwise accepts any share, and whose name is on the register, shall, for the purpose of these articles, be a shareholder.

Certificates.

12. Every shareholder shall, on payment of such sum not exceeding one shilling as the board from time to time prescribe, be entitled to a certificate under the common seal of the company, specifying the share or shares held by him, and the amount paid thereon.

Renewal of
certificates.

13. If any such certificate be worn out or lost, it may be renewed on payment of such sum not exceeding two shillings and sixpence, as the board may from time to time prescribe, provided such evidence as the board deem reasonable be afforded of the title of the party applying for the renewal.

Company to
have a lien
on shares.

14. The company shall have a first and paramount lien upon all the shares of any shareholder, for all monies due to the company from him, alone or jointly with any other person; and where a share is held by more persons than one, the company shall have a lien thereon in respect of all monies so due to them from all or any of the holders thereof.

The first-
named of
joint holders

15. If any share stand in the names of two or more persons, the person first named in the register may, at the option of the board, be, as regards voting at meetings,

receipt of dividends, services of notices and all or any other matters connected with the company except the transfer of the share, deemed the sole holder thereof.

deemed sole holder.

16. No share shall be subdivided.

No share shall be subdivided.

17. The company shall not be bound by or recognize any equitable, contingent, future or partial interest in any share, or (except only as is by these presents otherwise expressly provided) any other right in respect of a share than an absolute right thereto in accordance with these presents, in the person from time to time registered as the holder thereof.

Company not bound to recognize any interest in share other than that of registered holder.

18. Any shareholder who shall change his name or place of abode, or being a female, who shall marry, and the husband of any such last-mentioned shareholder respectively shall not be entitled to recover any dividend, or to vote, until notice of the change of name, or abode or marriage, be given to the company, in order to the same being registered.

Notice of change of name, or place of abode, or of marriage of shareholder.

VI. *Transfer and Transmission of Shares.*

19. The company shall keep a book to be called the "register of transfers," and therein shall be fairly and distinctly entered the particulars of every transfer or transmission of any share, and the book shall be from time to time authenticated by having the seal affixed thereto at a general meeting.

Register of shareholders.

20. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transfer books when closed.

21. The company may decline to register any transfer of shares whilst the shareholder making the same is, either alone or jointly with any other person, indebted to the company on any account whatsoever, or unless the transferee is approved by the board.

Company may refuse to register.

22. The executors or administrators of a deceased shareholder shall be the only person recognized by the company as having any title to his shares.

Title to shares of deceased holders.

23. Any person becoming interested in a share in consequence of the death, bankruptcy or insolvency of any shareholder, or the marriage of any female shareholder, or by any lawful means other than by a transfer or deed in accordance with these presents, may, upon producing such evidence as the board think sufficient, either be registered himself as the holder of the share, or elect to have some person nominated by him and approved by the board registered as such holder.

Registration of persons entitled to shares in any way other than by transfer.

Transfer by such person to his nominee.

24. Provided nevertheless that if he shall elect to have his nominee registered, he shall testify the election by executing to his nominee a deed of transfer of the share, and until he do so he shall not be freed from any liability in respect of the share.

Form of transfer to be approved by board.

25. Every transfer of share by deed shall be in such form as the board from time to time lawfully approve, and shall be presented to the company accompanied by such evidence as the board may require to prove the title of the transferor.

Board may require evidence of transmission.

26. Every transmission of a share shall be verified in such a manner as the board require, and the company may refuse to register any such transmission until the same be so verified.

Fee on transfer or transmission.

27. There shall be paid in respect of the transfer or transmission of any number of shares to the same party such sum of money, not exceeding ten shillings, as the directors may from time to time prescribe.

VII. *Calls.*

Board may make calls to be paid by shareholders.

28. The board may from time to time, but subject to the conditions hereinafter mentioned, make such calls upon the shareholders in respect of all monies unpaid on their shares as the board think fit, and every shareholder shall be liable to pay the amount of every call to the persons and at the time and place appointed by the board.

Twenty-one days' notice of calls to be given.

29. Twenty-one days' notice at the least shall be given of the time and place appointed by the board for the payment of every call.

Interval between calls and amount of each.

30. No call shall be made until the expiration of three months from the incorporation of the company, nor shall any call exceed five pounds per share, and at least three months shall intervene between the time appointed for the payment of two successive calls.

Call to date from the day on which it is made, as to calls after twenty-five pounds per share paid.

31. A call shall be deemed to have been made at the time when the resolution authorizing the call was passed, but no call shall be made beyond the amount of twenty-five pounds per share, except by resolution of three-fourths of the directors, provided always that such resolution shall be confirmed at the next meeting of the board.

Calls to carry interest.

32. If any shareholder fail to pay any call due from him on the day appointed for payment thereof, he shall be liable to pay interest for the same at the rate of ten

pounds per centum per annum, from the day appointed for the payment thereof to the time of actual payment.

33. The board may, if they think fit, receive from any of the shareholders willing to advance the same to the extent of twenty-five pounds per share, all or any part of the amounts of their respective shares beyond the sums actually called for, and upon the monies so paid in advance, or upon so much thereof as from time to time and at any time thereafter exceeds the amount of the calls then made upon and due in respect of the shares on account of which such advances are made, the board may pay or allow interest at such rate as the shareholder paying the sum in advance and the board agree upon, provided always that, if at any time after the payment of any such monies so paid in advance, the rate of interest agreed to be paid to any such shareholder appears to the board to be excessive, it shall be lawful for the board from time to time to repay to such shareholder so much of such monies as shall then exceed the amount of the calls made upon such shares unless there be an express agreement to the contrary, and after such repayment such shareholder shall be liable to pay, and such shares shall be charged with the payment of, all future calls, as if no such advance had been made.

Board may receive twenty-five pounds on each share beyond calls, and pay interest thereon.

VIII. *Forfeiture of Shares.*

34. If any shareholder fail to pay any call due from him on the appointed day, the board may at any time thereafter during such time as the call remains unpaid, serve a notice on him requiring him to pay the call, together with any interest accrued due thereon by reason of non-payment as aforesaid.

If calls not paid, notice to be given to shareholder.

35. The notice shall name a day (not being less than fourteen days from the date of the notice) and a place or places on and at which the call and interest are to be paid, and the notice shall also state, that, in the event of the non-payment of such call and interest at the time and place appointed, the share in respect of which the call was made will be liable to be forfeited.

Terms of notice.

36. If the requisitions of any such notice shall not be complied with, every or any share in respect of which the notice is given may be forfeited by a resolution of the board to that effect.

In default of payment shares to be forfeited.

37. When any share is so declared to be forfeited, notice of the forfeiture shall be given to the holder of the

Notice of forfeiture to shareholder.

share, and an entry of the forfeiture, with the date thereof, shall forthwith be made in the register.

Forfeited shares to be property of company, and may be sold, &c.

38. Every share which shall be forfeited, shall thereupon be the property of the company, and may be sold, re-allotted or otherwise disposed of, either to the original holder thereof, or to any other person, upon such terms and in such manner as the board think fit.

Shareholder still liable to pay calls and interest.

39. Any shareholder whose shares may be forfeited, shall, notwithstanding the forfeiture, be liable to pay to the company all calls owing upon the shares at the time of forfeiture, and the interest (if any) thereon.

Forfeiture of share to extinguish claims on the company.

40. The forfeiture of a share shall involve the extinction at the time of the forfeiture of all interest in all claims and demands against the company in respect of the share, and all other rights incident to the share, except only such of those rights as by these presents are expressly saved.

Forfeiture not to prejudice dividend.

41. The forfeiture of a share shall not prejudice the right to any dividend previously declared thereon.

Certificate of forfeiture.

42. A certificate in writing, under the hands and seals of two directors, and countersigned by the secretary, that a share has been duly forfeited in pursuance of these presents, and stating the time when it was forfeited, shall be conclusive evidence of such forfeiture, and an entry of every such certificate shall be made in the minutes of the proceedings of the directors.

Directors may accept surrenders and forfeitures of shares.

43. The directors may at any time accept the surrender and forfeiture of any shares from or by any shareholder desirous of surrendering and forfeiting them on such terms as the directors may think fit.

IX. Meetings of Shareholders.

First ordinary meeting.

44. The first ordinary meeting of the company shall be held at such time within twelve months after the commencement of the business of the company by the opening of a bank in or or at in the county of , and at such other places as the board may determine.

Subsequent ordinary meetings.

45. Subsequent ordinary meetings shall be held once in every half-year, at such time and place in , or as the directors from time to time determine.

Extraordinary meetings.

46. The directors may, whenever they think fit, call an extraordinary meeting, and they shall do so upon a requisition in writing by twenty or more shareholders, holding in the aggregate not less than one thousand shares.

47. Any requisition so made by shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company. Requisition of shareholders to state object of meeting.
48. Upon the receipt of any such requisition, the directors shall forthwith convene an extraordinary meeting, and if they neglect to do so for one month from the leaving of the requisition, the requisitionists may themselves convene the meeting: provided always, that no resolution passed thereat shall be binding on the company, unless and until the same be confirmed by a second extraordinary meeting convened for the purpose by the chairman of such extraordinary meeting upon fourteen days' notice at the least. On receipt of requisition directors to call meeting, and in default shareholders may do so.
49. The company may from time to time by resolution, passed by at least three-fourths of the votes of the shareholders present, personally or by proxy, at any extraordinary meeting repeal, alter or make new provisions in lieu of or in addition to any regulations of the company, whether contained in the articles of association or not. Company may vary articles of association.
50. Fourteen days' notice at least of every meeting, specifying the place, time and hour of meeting, and the objects and business of the meeting, shall, in the discretion of the directors, be given either by advertisement, or by notice sent by post or otherwise to the registered address of every shareholder, whose registered address is in the United Kingdom; or, if the directors think fit, both by advertisement and by notice as aforesaid, and no business other than such as is specified in such notice shall be transacted thereat. Fourteen days' notice of meeting to be given.
51. Every such notice shall be signed by the secretary, or by such other officer as the directors may appoint, except in case of a meeting convened by shareholders in accordance with these presents, in which case the notice may be signed by the shareholders convening the same, or by any twenty or more of them. By whom notice to be signed.
52. The omission to give any such notice to any of the shareholders if the notice has been previously advertised, shall not invalidate any resolution passed at any such meeting. Omission to give notice not to invalidate resolution passed at meeting.
53. Except as otherwise provided by these presents, no business shall be transacted at any general meeting, unless there shall be personally present at the commencement of the business twenty or more shareholders. Number of shareholders necessary for transaction of business.
54. If at the expiration of one half-hour from the time appointed for the meeting the required number of shareholders shall not be present, the meeting, if convened If required number not present meeting to be adjourned.

upon the requisition of shareholders, shall be dissolved; but in any other case it may be adjourned to such time on the following day, or on such other day and to such place as the shareholders present at the expiration of the half-hour determine.

Adjourned meeting to transact business.

55. At any adjourned meeting the shareholders present, whatever their number or the amount of the shares held by them, shall have power to decide upon all the matters which could properly have been disposed of at the meeting from which the adjournment took place, in case a sufficient number of shareholders had been present thereat.

Chairman of directors to be chairman of meetings.

56. The chairman (if any) of the board of directors shall preside as chairman at every meeting, but if there be no such chairman, or if at any meeting he shall not be present at the time for holding the same, or shall be unwilling to act as chairman of the meeting, the directors, if any be present, shall choose one of their own number to be chairman of the meeting.

In chairman's absence any director or shareholder may act.

57. If at any meeting twenty shareholders shall be present, and the chair shall not be taken by the chairman of the board, or by a director, at the expiration of half-an-hour from the time appointed for holding the meeting; or if before the expiration of that time all the directors shall decline to take the chair, the shareholders present shall choose one of their own number to be chairman of the meeting.

Chairman with consent may adjourn meeting.

58. The chairman, with the consent of the meeting, may adjourn any meeting from time to time and from place to place, in _____, or _____; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

Motions to be decided by show of hands or by votes, chairman to have casting vote.

59. Every motion submitted to a meeting shall be decided in the first instance by a show of hands, and in the case of an equality of votes, the chairman shall, both on the show of hands and at the poll, have a casting vote in addition to his own vote.

How questions to be decided at general meetings.

60. A declaration by the chairman of any meeting that a resolution has been carried thereat upon a show of hands shall be conclusive, and an entry to that effect in the book of proceedings of the company shall be sufficient evidence of that fact, without proof of the number or proportion of the votes recorded in favor of or against such resolution, unless immediately on such declaration a poll

shall be demanded in writing by at least ten shareholders present and entitled to vote at such meeting.

61. If a poll be duly demanded, the same shall be taken at such time and place in London, Westminster or Birmingham, and either by open voting or by ballot, as the chairman shall direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Poll to be taken if demanded.

62. The proceedings at any meeting duly called and constituted, and all resolutions and decisions of such meetings shall be valid and binding on the company.

Proceedings and resolutions at meeting to be binding.

X. *Votes of Shareholders.*

63. Every shareholder who has been duly registered for six months previous to any meeting, shall be entitled to vote at such meeting, and shall have one vote in respect of each and every share held by him, provided that no single shareholder shall have more than twenty votes.

Number of votes to which shareholders entitled.

64. If any shareholder be a lunatic, idiot or *non compos mentis*, the vote in respect of his share or shares shall be by his committee, *curator bonis*, or other legal curator; and if any shareholder be a minor, the vote in respect of his share or shares shall be by his guardian, tutor or curator, or any one of his guardians, tutors or curators, if more than one.

How shareholders *non compos mentis* or minor may vote.

65. No shareholder shall be entitled to vote at any meeting in respect of any share held by him alone or jointly, whilst any call due from him alone or jointly remains unpaid.

No shareholder in arrear with call to vote.

66. Votes may be given either personally or by proxy, but every proxy shall be appointed in writing under the hand of the appointor, or under the common seal of any corporation who may be the appointor, and any committee, curator, guardian or tutor may appoint such proxy.

Voting in person or by proxy.

67. No person shall act as proxy, unless at the time of appointment he be a shareholder and qualified to vote as such, nor unless the instrument of his appointment shall be deposited at the office at least three clear days before the time for holding the meeting at which he proposes to vote.

The proxy must be a shareholder qualified to vote, and his appointment be deposited with secretary.

XI. *Directors.*

68. The first directors shall be appointed by the subscribers of the memorandum of association, or by a majority of them.

Appointment of first directors.

Until such appointment subscribers to memorandum to act.

First directors to continue in office until first ordinary meeting.

Board may fill up vacancies and add to their number.

Any director so appointed to hold office so long only as vacating director would have been entitled.

Board may increase or diminish the number of directors, and determine retirement of such increase or diminution.

Three directors to retire annually.

Retiring directors, how determined.

69. Until such directors are appointed as aforesaid, the subscribers of the memorandum of association shall be deemed to be and shall exercise all the powers of directors; but immediately upon such appointment they, or such of them as are not appointed directors, shall cease to have any power under these presents, and all future directors, until the first ordinary meeting, shall be appointed by the board.

70. The first directors, and any other directors appointed by the board, shall continue in office until the ordinary meeting in the month of December, 1863, at which period they shall all retire from office.

71. The board shall have power, at any time and from time to time before the second ordinary meeting, to supply any vacancies in their number arising from death, resignation or otherwise, and also to add to their number such additional directors as they think fit, so as at the time of holding such meeting the number of directors shall not exceed thirty, but that no vacancy (except such as shall be caused by a director retiring in rotation) shall be filled up until the number of directors shall be reduced below twenty-four, and from and after that event the maximum number of directors shall be thirty.

72. Any casual vacancy occurring, the number of directors subsequent to the second ordinary meeting may be filled up by the board, subject to the approval of the next ordinary meeting; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

73. The board, subject to the approval of a meeting, may from time to time at any time subsequent to the second ordinary meeting, increase or reduce the number of directors, provided that the number shall in no case be less than ten nor greater than thirty, and they may also determine in what rotation such increased or reduced number shall go out of office.

74. At the second ordinary meeting, and at the ordinary meeting in the month of December in every subsequent year, three of the directors, if the number of directors be twelve, or if not, the number nearest to one-fourth of the directors for the time being, shall retire from office.

75. The directors to retire from office at the second ordinary meeting shall, unless the directors otherwise arrange among themselves, be determined by ballot; in

every subsequent year the directors to retire shall be those who have been longest in office.

76. In case any question arise as to which shall retire of the directors who have been the same time in office, the same shall be decided by the directors by ballot.

Retiring directors may be determined by ballot.

77. Any person not being a director at the time of the second ordinary meeting, shall not be eligible to the office of director, except he be the holder of at least ten shares, and shall have held the shares at least six months next preceding the day for election, nor unless he shall have given to the company at least ten days previous notice in writing of his willingness to be elected, and such notice shall not be given more than three months previously to the day for election; provided always, that any director retiring by rotation shall be deemed willing and eligible to be re-elected without any such notice, except where he shall have given to the company notice in writing of a contrary intention, at least twenty-one days before the day for election.

Qualification of directors.

78. If, at any meeting whereat any election of directors ought to be had, no such election takes place, the meeting shall stand adjourned to the next business day at the same time and place, and if at the adjourned meeting no election take place, the directors who might have been bound to retire shall continue in office until the then next ordinary meeting.

If election not made, meeting to stand adjourned for purpose of election.

79. A director may at any time give notice in writing of his wish to resign, by delivering such notice to the secretary, or leaving it at the registered office of the company, and on the acceptance of his resignation by a board, and not before, his office shall be vacant.

Directors may resign.

80. The directors shall be entitled to set apart and receive for their remuneration, in the year commencing from the 25th day of December, 1862, and in and for each succeeding year commencing from the 25th day of December, a sum of money not exceeding the sum of two thousand five hundred pounds, and to divide the same among them in manner hereinafter mentioned; and whenever the company shall declare a dividend on the capital stock of the company exceeding six per cent. and not exceeding eight per cent., the directors shall in addition be entitled to receive an additional remuneration of one thousand pounds; and whenever the company shall declare a dividend exceeding eight per cent. and not exceeding ten per cent., the directors shall in addition be entitled to receive an additional remuneration of one

Remuneration of directors.

thousand pounds, and a further remuneration of five hundred pounds for every additional two per cent. of dividend declared.

How remuneration divided.

81. The monies to which the directors are so for the time being to be entitled shall be divided among them in such proportions and manner as the board may determine.

When office of director to be vacated.

82. The office of any director shall be vacated—

If he accepts or holds any other office under the company;

If he becomes bankrupt or insolvent, or compounds with his creditors;

If he be declared lunatic, or becomes of unsound mind;

If he be absent from the board for more than three consecutive months without the consent of the board;

If he cease to hold the required number of shares that would qualify him for the office.

Director may be removed and successor appointed at extraordinary meeting.

83. The company in extraordinary meeting may, by a resolution passed by the votes of shareholders holding in the aggregate at least four-fifths of the registered shares, remove any director before the expiration of his period of office, and appoint a qualified shareholder in his stead; and the director so appointed shall in all respects stand in the place of his predecessor.

Indemnity to directors and others from their own acts.

84. Every director, auditor, manager, secretary and other officer, and his heirs, executors, administrators and assigns, shall be indemnified by the company from all losses and expenses incurred by him respectively in or about the discharge of his respective duties, except such as happen from his respective wilful acts or defaults.

Indemnity to directors and others from the acts of other persons.

85. No director or officer, nor heirs, executors, administrators or assigns of any director or officer, shall be liable for any other director or officer, or for joining in any receipt or other act for conformity, or for any loss or expense happening to the company by the insufficiency or deficiency of title to any property acquired by order of the directors for or on behalf of the company, or for the insufficiency or deficiency of any security in or upon which any of the monies of the company shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any monies, securities or effects shall be deposited, or for any other loss, damage or misfortune whatsoever, which shall happen in the execution of the duties of his respective

office, or in relation thereto, unless the same happen through his own wilful act or default.

86. Duly qualified persons shall from time to time be appointed to be solicitors, managers, and secretary of or to the company. Messrs. , of , shall be the first solicitors of the company.

Appointment of solicitors, secretaries and managers.

87. Every future solicitor, manager, and secretary of or to the company, shall be from time to time appointed by the directors at a board specially convened for the purpose; and neither the present nor any future solicitors, managers, and secretaries shall be removed from office except by the resolution of a board meeting, at which not less than three-fourths of the directors shall be present and of which meeting not less than fourteen days notice shall have been given, such notice to state the object for which such meeting shall be convened.

Removal of solicitors, secretaries and managers.

XII. Powers and Proceedings of the Directors.

88. The business of the company shall be managed by the board, who, in addition to the powers and authorities by the statutes or by these presents expressly conferred upon them, may exercise all such powers, give all such consents, make all such arrangements, and generally do all such acts and things, as are or shall be by the statutes and these presents directed or authorized to be exercised, given, made, or done by the company, and are not thereby expressly directed to be exercised, given, made, or done by the company in meeting, but subject nevertheless to the provisions of the statutes and of these presents, and subject also to such (if any) regulations as are from time to time prescribed by the company in meeting; but no regulation made by the company in meeting shall invalidate any prior act of the board which would have been valid if the regulation had not been made.

Powers of directors.

89. The directors shall meet for the despatch of business at such times and places as they think fit, and may make such regulations as they think proper for summoning and holding their meetings, and for the transaction of business thereat, and for determining the quorum necessary for the transaction of business, as they from time to time shall judge expedient.

Meetings of directors.

90. The directors may appoint a chairman of their meetings, and determine or shorten the period for which he shall retain office.

Directors may appoint chairman.

91. All meetings of the directors shall be presided over by the chairman if present, but if a chairman be not ap-

Appointment of chairman.

pointed, or there be a vacancy in the office of chairman, or if at any meeting of directors the chairman be not present at the time appointed for holding the same, then and in that case the directors present shall choose one of their own body then present to preside at the meeting.

How questions at board meetings decided.

92. Any question which shall arise at any meeting of the directors shall be decided by a majority of votes, and in case of an equality of votes the chairman thereat shall have a casting vote in addition to his own vote as a director.

Board may appoint committees.

93. The board may delegate any of their powers other than the power to make calls, to committees consisting of such members of their body as the board think fit, and they may from time to time revoke and discharge any such committee, either wholly or in part, and either as to persons or purposes; but every committee so formed shall, in exercise of the powers delegated to it, conform to all such regulations as may be prescribed by the board; all acts done by any such committee in conformity with such regulations, and in fulfilment of the purposes of their appointment, but not otherwise, shall have the like force and effect as if done by the board, and the directors shall have power to remunerate the members of any special committee, and charge such remuneration to the current expenses of the company.

Acts of board or committee to be valid notwithstanding informal appointments.

94. The acts of the board and of any committees appointed by the board shall, notwithstanding any vacancy in the board or committee, or any defect in the appointment of any director, or of any member of the committee, be as valid as if no such vacancy or defect had existed, and as if every such person had been duly appointed, provided the same be done before the discovery of the defect.

Meetings of committees.

95. The meetings and proceedings of such committees shall be governed by the provisions herein contained for regulating the meetings and proceedings of directors so far as the same are applicable thereto, and be not superseded by the express terms of the appointment of such committees respectively.

Minutes of proceedings of directors to be kept.

96. The directors shall cause minutes to be made in books, to be provided for the purpose of the following matters, *videlicet*:

- 1st. Of all the appointments of officers and committees made by the directors.
- 2nd. Of all the names of the directors present at each meeting of directors, and of the members of

committees appointed by the board present at each meeting of the committee.

3rd. Of the proceedings of all general meetings.

4th. Of the proceedings of all meetings of the directors and of committees appointed by the board.

97. The directors shall be at liberty to commence the business of the company as soon as they shall see fit, notwithstanding the whole capital may not have been then subscribed for or taken. When business may commence.

98. The directors shall provide for the safe custody of the seal under such regulations as the board may prescribe, and it shall not be used except by the authority of a board and in the presence of at least two directors. Custody and use of common seal.

99. Every deed or other instrument to which the seal is required to be affixed shall be signed by two directors and countersigned by the secretary. Deeds how executed.

100. In their management of the business of the company, the directors without any further power or authority from the shareholders may do the following things, videlicet: Directors specially empowered in certain matters.

1. They may from and out of any monies or funds of the company make all or any of the payments following, that is to say, all costs, charges, and expenses whatsoever, including solicitors' and brokers' charges, and whether preliminary or otherwise, that may have been incurred in and relating to the projection and formation of the company, and in or about the preparation and registering the memorandum and articles of association, and also as a consideration for the great labour, expense, and risk which the promoter has incurred and been put to in and relating to the promotion and formation of the company in payment unto him when and as they the directors in their discretion shall think proper of the sum of 5,000*l*. To pay preliminary and other expenses.

2. Except as by these presents otherwise provided, they may appoint, and at pleasure remove or suspend, any solicitor or solicitors, a general manager, as well as branch or local managers, and a secretary, and such other officers, clerks, and servants, either for permanent, or temporary, or special services, as they from time to time shall deem expedient for carrying on the business of the company, and may determine the duties and powers of such officers, clerks, and servants, and may fix the amount of their salaries and emoluments, and may Appointment, suspension, dismissal and remuneration of solicitor and officers.

pay the same out of the funds of the company : Provided always that they shall in all cases require security to be given by every such officer, clerk, or servant before he shall enter upon the duties of his office, in such an amount as they shall think sufficient to ensure the faithful discharge of his duties: Provided also that the suspension or dismissal of the general manager shall only take place at a board specially convened for that purpose.

Employment
and remuneration of
brokers.

3. They may employ such brokers, surveyors, agents, valuers, and other persons as they think necessary to dispose of, survey, examine, or report upon any property of the company, or which may be offered to the company, or for the acquisition of which it may be expedient for the directors to treat, and may allow and pay out of the funds of the company to the persons so employed such commission, salaries, wages, and other remuneration as the directors may deem reasonable.

Establishment of
branch
banks, &c.

4. They may establish such branch banks, agencies and local boards, and may make such regulations for their management, as the directors from time to time think proper, and for that purpose may appoint such local directors, managers, officers, clerks and servants, with such remuneration and at such salaries as they consider advisable, and may pay the expenses occasioned thereby out of the funds of the company, and may from time to time discontinue all or any of such branch banks, agencies or local boards, and may remove or suspend all or any of the local directors, managers, officers, clerks or servants, for such reasons as they think proper, and without assigning any cause.

Acceptance
of bills and
promissory
notes.

5. They may make, give, accept, indorse, transfer, discount and negotiate such bills of exchange, promissory notes or other similar obligations as they may think desirable for carrying on the business of the company.

Acquisition
of business
premises.

6. They may, for carrying on and managing the business of the company, hire, take or acquire, by purchase, lease or otherwise, such houses, buildings, land, ground or premises, upon such terms, and for such price or consideration and at such rent, as they may from time to time think advisable. They may pull down, remove, alter or convert any such

houses, buildings or premises, and may erect and build such other houses and buildings in lieu thereof on any land purchased, hired or rented as aforesaid, and may from time to time alter or convert any such houses or buildings as aforesaid, in such manner as they may consider necessary or advisable for carrying on the business of the company. They may fit up and furnish, and insure against loss by fire, all or any of such houses or buildings, and let or demise or give possession of the whole or any part of the same, whether fitted up or furnished or otherwise, to such person or persons and on such terms as to tenancy or occupation as they may consider advisable, with regard to the interests of the company and the promotion or carrying on of its business. They may from time to time sell and buy in any such lands, houses or buildings as aforesaid, and may resell the same, and may otherwise deal with all or any part of the same, as they consider most conducive to the interests of the company.

7. They may adopt and carry into effect any contract or arrangement already entered into on behalf of the company in relation to any land or ground, houses or buildings intended for its use, and may enter into and carry into effect any contract or arrangement which they may deem expedient, whether with corporations or individuals, for the acquisition or for the disposal of any property or otherwise, in relation to any matter connected with the business of the company, upon such terms as they from time to time deem reasonable. Contracts.

8. They may give credit, with or without security, upon cash accounts, to such amount, at such rate of interest, and upon such terms as they think fit. But no director shall vote on any motion respecting the loan or advance of money or otherwise, giving credit to himself, his partner, father, brother, son, son-in-law, or respecting any such loan, advance, or giving credit on any security, or discounting any bill, promissory note or other security offered by himself or by his partner, or by any such relation as aforesaid, if he or his partner or any such relation shall be the person or one of the persons to receive the money referred to in such motion. And no director or officer of the com- As to credits and loans.

pany shall be security for any person in any loan transaction with the company. No shareholder shall be entitled to demand as of right a cash or other credit; and it shall be entirely in the discretion of the board whether such credit shall be given.

Payment for
acquired
property.

9. They may pay for the acquisition of any property by these presents authorized to be acquired by or for the company either in cash or in shares (to be treated as either wholly or in part paid up), or partly in cash and partly in such shares or in such other manner as they from time to time deem expedient.

Mortgage
and sale of
company's
property.

10. They may let, mortgage, sell or otherwise dispose of, either absolutely or conditionally, and in such manner and upon such terms and conditions in all respects as they think fit, any of the property of the company, and may accept payment or satisfaction for any property so disposed of in fully paid up or other shares, or partly in shares and partly in cash, or in such other manner as the directors deem expedient.

May take
transfer of
mortgages
and other
securities.

11. They may procure or take upon such terms as they think expedient, a transfer of any mortgage or other security affecting any property belonging to the company or authorized to be acquired for the company, and that whether they have or have not at the time of taking the transfer acquired or entered into any treaty relative to the acquisition of such property, and may pay out of the funds of the company all such sums as shall be necessary for that purpose.

Amalgama-
tion with or
purchase of
business of
any other
company.

12. They may, upon such terms as they think fit, amalgamate with or purchase or acquire the business and property of any company, partnership or person carrying on any business included amongst the objects of this company as specified in the memorandum of association, and may pay for the same either in cash or in shares, to be treated as either wholly or in part paid up, or partly in cash and partly in such shares, or in such other manner as the said board from time to time deem expedient.

May give
security for
money de-
posited with
company.

13. They may secure the repayment of any money deposited with the company, and the interest thereon, by means of deposit notes, bills of exchange, pro-

missory notes, debenture notes or bonds, or in such other manner as may be agreed upon between them and the depositor.

14. They may from time to time raise or borrow, in the name or otherwise on behalf of the company, such sums of money as they from time to time think expedient, either by way of mortgage of the whole or any part of the property of the company, or by bonds or debenture notes, or in such other manner as they deem best. May borrow money.
15. They may, for the purpose of securing the repayment of any money so borrowed with interest, make and carry into effect any arrangement which they deem expedient, by conveying any property of the company to trustees or otherwise. May secure repayment of borrowed money.
16. They may invest such part of the funds of the company as shall not be required to satisfy or provide for immediate demands in or upon government stock or funds or exchequer bills or upon such other securities or as they deem expedient, and may from time to time vary such securities and convert the same as occasion requires or as they deem expedient. Investment of funds.
17. They may institute, conduct, defend, compromise, refer to arbitration, and abandon legal and other proceedings and claims by and against the company, and the directors and officers of the company, and otherwise concerning the affairs of the company. Proceedings and claims by and against the company.

XIII. *Secretary.*

101. The secretary for the time being of the company shall be paid such a salary per annum as the directors may from time to time determine; and in the event of any vacancy occurring in the office of secretary, the directors may from time to time supply the vacancy by the appointment of such person as they think fit, and determine his duties and powers, and may fix his salary and emoluments; such person when so appointed, but before he shall enter upon the duties of his office, shall give to the directors security for the due and faithful performance of such duties in such amount as they think

The secretary's remuneration and filling up vacancies.

XIV. Declaration of Secrecy.

Declaration
of secrecy.

102. Every director, manager, auditor, trustee, member of a committee, officer, servant, agent, accountant or other person employed in the business of the company shall, before entering upon his duties, sign a declaration pledging himself to observe a strict secrecy respecting all transactions of the company with their customers, and the state of accounts with individuals, and in all matters relating thereto, and shall by such declaration pledge himself not to reveal any of the matters which may come to his knowledge in the discharge of his duties, except when required so to do by the board, or by any meeting, or by a court of law or equity, or by the person to whom such matters relate, and except so far as may be necessary in order to comply with any of the provisions contained in these presents.

XV. Accounts.

Payments by
cheques, how
cheques to
be signed.

103. Every sum paid on behalf of the company amounting to 5*l.* or upwards shall be paid by a cheque, which shall be signed by two directors and countersigned by the secretary.

No payments
to be made
without order
of board, ex-
cept petty
cash.

104. No payment on account of the company shall be made without the order of the board, except only payments on petty cash account, for which the board may place such sum as they think fit at the disposal of the secretary or other officer.

Petty cash.

105. The secretary shall make to every board meeting a return of all payments and liabilities on petty cash account.

Amount of
receipts and
expenditure.

106. The directors shall cause true accounts to be kept of all sums of money received or expended by the company, and of the matter in respect of which such receipt or expenditure takes place, and of the credits and liabilities of the company, and of all other matters necessary for showing the true state and condition of the company; and the accounts shall be kept in such books and in such manner, and the books of accounts shall be kept in such place or places of security, as the directors think fit.

The prelimi-
nary ex-
penses
accounts.

107. Provided nevertheless, that all costs, charges and expenses incurred or sustained in or about the establishment of the company, and subsequent to the registration thereof, including therein the costs of advertising, travelling expenses, printing, stationery, brokerage, solicitor's expenses, remuneration to promoter, furniture and fittings of offices, expenses attendant upon the formation of

branches, and any other costs, charges or expenses which the board consider may be fairly deemed and treated as preliminary, shall be placed to a separate account, to be called the "Preliminary Expenses Account," and shall be chargeable on the profits of the company over a period of not less than ten years nor more than twenty years, as the board may deem expedient.

108. No shareholder, unless he be a director or auditor, or an officer, clerk, accountant or other person whose duty requires him to do so, shall be entitled to inspect the books, accounts, documents or writings of the company, except such as shall be produced for that purpose at a general meeting, nor shall any shareholder be entitled in equity to a discovery thereof.

Inspection
of docu-
ments.

109. At every ordinary meeting the directors shall lay before the meeting a statement of accounts of the company made up to a date not more two months before the meeting from the time when the last preceding statement was made; or, in case of the first statement on the commencement of the company, and every such statement shall be accompanied by a report of the directors as to the state and condition of the company, and as to the amount which they recommend to be paid out of the profits by way of dividend or bonus to the shareholders, and the amount (if any) which they recommend to be retained for the formation of a reserved fund.

Statement of
account and
report to be
furnished to
general
meetings.

XVI. Audit.

110. The accounts of the company shall be from time to time examined, and the correctness of the statements shall be from time to time ascertained by two or more auditors, in accordance with these presents.

Accounts to
be audited.

111. No person shall be eligible as an auditor who shall not have held for six months previously to the meeting, or who is interested otherwise than as a shareholder in any transactions of the company, and no director or officer of the company shall, during his continuance in office, be eligible as an auditor.

Qualification
of auditor.

112. The directors shall appoint the first auditors of the company, and all future auditors, except as is herein-after-mentioned, shall be appointed at the first ordinary meeting of the company by the shareholders present thereat, and shall hold their office only until the next ordinary meeting in every year after their appointment.

Appointment
of auditors.

113. Retiring auditors shall be eligible for re-election.

Retiring
auditors
eligible for
re-election.

Notice to be given of intention to propose auditors.

114. No person other than a retiring auditor shall be eligible to the office of auditor unless notice of an intention to propose him at an ordinary meeting be given at least seven days and not more than one month before the meeting, and a copy of every such notice shall be posted up at the office during the five days next before the meeting.

Auditor's remuneration.

115. The remuneration of the auditors shall be determined, and may be from time to time varied, by general meetings.

Directors may fill up casual vacancy in auditorship.

116. If any vacancy that may occur in the office of auditor at any ordinary meeting shall not be then supplied, or if any casual vacancy shall occur, the directors shall (subject to the approval of the next ordinary meeting) fill up the vacancy by the appointment of a person who shall hold office until the next ordinary meeting.

Auditors to have copies of statement of accounts.

117. The auditors shall be supplied with copies of the statement of accounts intended to be laid before the next ordinary meeting at least fourteen days before the meeting, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

XVII. *Dividends, Bonus and Reserve Fund.*

Declaration of dividend or bonus.

118. The directors may with the sanction of the company in general meeting declare a dividend or bonus to be paid to the shareholders in proportion to their shares.

Reserve fund.

119. Previously to the directors recommending any dividend or bonus they shall set aside, out of the profits of the company, such a sum as they think proper as a reserved fund, and shall invest the same upon such government securities, parliamentary stocks or funds, or in such other stocks or securities as they think fit.

Application of reserve fund.

120. The directors may from time to time apply such portion as they think fit of the reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the buildings and premises connected with the business of the company or any part thereof, or for any other purposes of the company, which they from time to time deem expedient.

Unpaid interest or dividend not to bear interest.

121. No unpaid interest or dividend shall ever bear interest as against the company.

Directors may deduct money due for calls.

122. The directors may deduct from the interest on dividends payable to any shareholder all sums of money due from him to the company on account of calls.

Notice to be given of

123. Notices of all interest or dividend to become payable shall be given to each shareholder entitled thereto.

and all interest or dividend unclaimed for three years after notice thereof is given may be forfeited by the directors for the benefit of the company, and if the directors think fit may be applied in augmentation of the reserved fund.

interest and dividends; dividends unclaimed for three years to be forfeited.

XVIII. *"Dissolution of the Company.*

124. If at any time the directors find that the losses of the company have exhausted the reserve fund, and also three-fourths of the paid-up capital, they shall forthwith call an extraordinary general meeting, and submit to it a full statement of the affairs of the company.

When reserved fund exhausted extra-ordinary general meeting to be called.

125. If it shall appear at such extraordinary meeting so called as aforesaid, and be duly resolved, that the ascertained losses of the company from bad debts have exhausted the reserve fund, and also three-fourths of the paid-up capital, the chairman at such meeting, unless such binding and sufficient contract for the purchase of the shares of all the shareholders who wish to retire from the company, and such sufficient provision for their indemnity shall be entered into and made as hereinafter is mentioned, shall declare the company dissolved, and the same shall be thereupon dissolved accordingly, except for the purpose of winding-up its affairs.

Declaration of dissolution.

126. If the company shall be dissolved, the directors in office at the time of such dissolution shall, with all convenient speed, wind-up and bring its accounts and affairs to a final close and settlement, and for the purposes of such winding-up, close, and settlement, but for no other, the powers of such directors shall be held to be subsisting.

On dissolution accounts to be made up.

127. When the affairs of the company shall be wound-up, closed and settled, so much of the capital as shall remain after meeting all claims, shall be paid to the shareholders in proportion as they were entitled thereto, and these presents shall thereupon become void; and such dissolution shall operate both at law and in equity as a final and general release between all parties concerned therein.

Surplus to be divided.

128. In order to assist in such winding-up, closing and settlements of account as aforesaid, it shall be lawful for the directors to declare any bad or doubtful debts to be irrecoverable, and to sell to any person not being a director any claims or demands upon the estates of bankrupt and other persons, or upon the assets of deceased

Directors may declare certain debts irrecoverable, and sell other debts.

persons if any claims or demands are not immediately recoverable.

Investment
and ultimate
application
of unclaimed
dividends.

129. Any unclaimed dividends shall be laid out and invested as the directors think fit, and the monies so invested and the accumulations thereof shall from time to time be paid to the persons so entitled to the same: provided that no such claim shall be admitted after six years from the day of dissolution, and that such monies to which no claim shall have been established within such period, shall then be applied as part of the capital for the benefit of the shareholders amongst whom the remainder of the capital shall be distributed, or shall have been distributed, and that the effluxion of the term of six years shall be an effectual bar against all persons afterwards claiming, whether such persons shall have been under legal disability or incapacity or not.

XIX. Notices.

Services of

130. All notices or other documents requiring to be served by the company upon the shareholders may be served either personally or by leaving the same for or sending them through the post in a letter addressed to each or any shareholder at his registered place of abode in the United Kingdom; and every notice sent through the post shall be deemed to have been served at the time on which in the usual course of post it would have been delivered.

Services of
notices on
shareholders
resident out
of the
United
Kingdom.

131. As to any shareholders whose registered place of abode shall not be in the United Kingdom, the office shall, as regards the service of notices or other documents, be deemed to be his registered place of abode in the United Kingdom; but any such shareholder may register any place in the United Kingdom, at which he shall desire such service to be made, and the same shall be made accordingly.

Notices by
shareholders
to be sent
through the
post.

132. All notices to be given on the part of shareholders shall be left at the registered office of the company, or sent through the post.

Advertisements.

133. All notices required to be given by advertisement shall be advertised in a London daily morning newspaper, and also in a newspaper published in whose publication shall be at least once every week.

Shareholders
bound by
notices, &c.
given to

134. Every person, who by operation of law, transfer or other means whatsoever shall become entitled to any share, shall be bound by any and every notice or other

document which, previous to his name and address being entered upon the register in respect of the share, is given to the person from whom he derives his title. previous holder.

135. When any notice or document is delivered or sent in accordance with these presents at or to the registered place of abode of a shareholder, then, notwithstanding he be then deceased, and whether or not the company have notice of his decease, such service of the notice or other document, shall for all purposes of these presents, be deemed service thereof on his heirs, executors, administrators and every of them. Service of notice good notwithstanding death of shareholder.

XX. *Arbitration.*

136. In all references to arbitration of any action, suit, dispute or difference in or relating to any matter, cause or thing to which the company shall be a party, full effect shall be given to the provisions of the Common Law Procedure Act, 1854, and every or any act from time to time in force and applicable thereto. Arbitration.

XXI. *Evidence.*

137. On the trial or hearing of any action or suit to be brought by the company against any shareholder to recover any debt due for any call, it shall be sufficient to prove that the name of the defendant is on the register of shareholders of the company as a holder of the number of shares in respect of which such debt accrued, and that notice of such call was duly given to the defendant in pursuance of these articles, and it shall not be necessary to prove the appointment of the directors who made such call, nor that a quorum of directors was present at the board at which such call was made, nor that the meeting at which such call was made was duly convened or constituted, nor any other matter whatsoever, but the proof of the matters aforesaid shall be conclusive evidence of the debt. Evidence in action or suit for calls.

Dated this day of , 186—.

NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS.

Witness to all the above signatures,

[Name],
Solicitor,
[Address].



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